

**United States Department of Labor
Employees' Compensation Appeals Board**

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Long Beach, CA, Employer**

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**Docket No. 10-14
Issued: July 9, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 28, 2009 appellant filed a timely appeal from the September 4, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying her request for a review of the written record. The Board has jurisdiction over this nonmerit decision.¹ Appellant also appealed from a February 2, 2009 schedule award decision of the Office. Because more than 180 days elapsed between the issuance of that decision and the filing of this appeal on September 28, 2009, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

The issue is whether the Office properly denied appellant's request for a review of the written record as untimely.

FACTUAL HISTORY

In March 2003 the Office accepted that appellant, then a 46-year-old mail processor, sustained several neck and arm conditions, including bilateral carpal tunnel syndrome and

¹ See 20 C.F.R. §§ 501.2(c), 501.3(a) and 501.3(e). The Board's regulations provide that any notice of appeal must be filed within 180 days from the date of issuance of a decision of the Office.

brachial neuritis/radiculopathy. In a February 2, 2009 decision, the Office granted appellant a schedule award for a 5 percent permanent impairment of her right arm and a 10 percent permanent impairment of her left arm.

In a form dated August 8, 2009 and postmarked August 21, 2009, appellant requested a review of the written record by an Office hearing representative in connection with the Office's February 2, 2009 decision.

In a September 4, 2009 decision, the Office denied appellant's request for a review of the written record as untimely. It found that she was not, as a matter of right, entitled to a review of the written record because her request, postmarked August 21, 2009, was not made within 30 days of the February 2, 2009 schedule award decision. The Office exercised its discretion and denied appellant's request for a review of the written record on the basis that her claim could be addressed through a reconsideration application.

LEGAL PRECEDENT

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision. The Office's regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office has provided that such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office's final decision.²

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.³ The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.⁴

ANALYSIS

Appellant's August 21, 2009 request for a review of the written record was made more than 30 days after issuance of the Office's February 2, 2009 decision. Therefore, appellant was not entitled to a review of the written record as a matter of right.⁵ The Office properly found that appellant was not entitled to a review of the written record as a matter of right because her

² 20 C.F.R. § 10.615; *see Michael J. Welsh*, 40 ECAB 994, 996 (1989).

³ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁴ *See Welsh*, *supra* note 2 at 996-97.

⁵ Appellant dated her request form August 8, 2009 but the form was sent to the Office in an envelope postmarked August 21, 2009. *See* 20 C.F.R. § 10.616(a) regarding the fixing of the date of such a request.

request for a review of the written record was not made within 30 days of the February 2, 2009 decision.

The Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. In the September 4, 2009 decision, it properly exercised its discretion by stating that it had considered the matter and denied appellant's request for a review of the written record on the basis that her schedule award claim could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁶ The evidence of record does not establish that the Office abused its discretion by denying appellant's request for a review of the written record.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a review of the written record as untimely.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).