

Appellant underwent medical treatment and submitted additional medical evidence supporting his claim.

By letter dated March 18, 2009, the Office acknowledged appellant's representative and advised him that appellant's claim was currently open for conservative medical care and was accepted for left lateral epicondylitis and left shoulder strain.

On March 20, 2009 appellant, through his attorney, requested an oral hearing. Appellant's representative indicated he was seeking review of the Office's March 18, 2009 decision.

By decision dated April 8, 2009, the Office denied appellant's hearing request finding that the record contained no final decision dated March 18, 2009.

LEGAL PRECEDENT

A claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.¹ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,² 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 Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁴

ANALYSIS

Under the Act, a hearing request may only be granted following a final decision.⁵ The Office's March 18, 2009 letter, though, was merely informational in nature and referenced findings of the Office's October 1, 2003 decision, which had accepted appellant's claim. As there was no final decision of record issued within 30 days prior appellant's request for a hearing to March 18, 2009, the Office properly denied appellant's hearing request. While on appeal appellant stated that he was appealing a decision of the Office dated February 12, 2009, the Board notes there is no decision or document of record dated February 12, 2009.

¹ *Claudio Vazquez*, 52 ECAB 496 (2001).

² 5 U.S.C. §§ 8101-8193.

³ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁴ *Herbert C. Holly*, 33 ECAB 140, 142 (1981).

⁵ 5 U.S.C. § 8124.

The Board finds that the Office properly denied appellant's hearing request as there is no adverse decision of record from which to request a hearing.

CONCLUSION

The Board finds that the Office properly denied appellant's hearing request.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 8, 2009 decision is affirmed.

Issued: March 3, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board