DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 10, 2009 appellant filed a timely appeal from an April 8, 2009 nonmerit decision of the Office of Workers’ Compensation Programs denying his hearing request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant’s hearing request.

FACTUAL HISTORY

On September 23, 2003 appellant, a 66-year-old mail carrier, filed an occupational disease claim (Form CA-2) for tennis elbow and left shoulder pain. He first became aware of his condition and that it was caused by his employment on September 16, 2003.

Appellant underwent medical treatment and submitted evidence supporting his claim. By decision dated October 1, 2003, the Office accepted his claim for left shoulder epicondylitis and left shoulder strain.
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. The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees’ Compensation 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. 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.

**ANALYSIS**

Under the Act, a hearing request may only be granted following a final decision. 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.

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2. 5 U.S.C. §§ 8101-8193.
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