

Appellant submitted evidence supporting his claim, and by decision dated December 15, 2008, the Office denied the claim because the evidence of record did not demonstrate that the medically diagnosed injury resulted from the identified employment incident.

Appellant requested an oral hearing. His hearing request was undated. The record does not contain an envelope bearing a postmark or other carrier's marking. The Office received appellant's hearing request on February 3, 2009.

By decision dated March 17, 2009, the Office denied appellant's hearing request because it was untimely filed.

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.¹ 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.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 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

If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, etc.), the Branch of Hearings and Review will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons.⁵

ANALYSIS

Appellant's request for an oral hearing before the Branch of Hearings and Review was not dated nor does the record contain its envelope bearing a postmark or other carrier's marking.⁶ Appellant's hearing request was received on February 3, 2009, more than 30 days after the Office's December 15, 2008 decision. Therefore, his request for an oral hearing was not timely

¹ 5 U.S.C. § 8124(b)(1).

² *Claudio Vazquez*, 52 ECAB 496 (2001).

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

⁴ *Claudio Vazquez*, *supra* note 2.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

⁶ 20 C.F.R. § 10.616(a).

and he was not entitled to a hearing as a matter of right.⁷ The Branch of Hearings and Review exercised its discretion in denying appellant's request for an oral hearing by finding that he could request reconsideration and submit evidence not previously considered that establishes his claim was filed in a timely manner.

The Branch of Hearings and Review, in its March 17, 2009 decision, properly exercised its discretion in determining whether to grant appellant's hearing request and noted that it had reviewed his claim and found that the issues involved in his claim could be equally addressed through submitting additional evidence and requesting reconsideration or appeal to the Board. Thus, the Board finds that the Branch of Hearings and Review did not abuse its discretionary authority in denying appellant's untimely request for a hearing.

CONCLUSION

The Board finds the Office properly denied appellant's request for an oral hearing as untimely.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 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

⁷ *Id.*