

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

B.K., Appellant

and

**U.S. POSTAL SERVICE, MAIL RECOVERY
CENTER, Atlanta, GA, Employer**

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**Docket No. 10-346
Issued: November 29, 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 October 30, 2009 appellant filed a timely appeal of an August 11, 2009 decision of the Office of Workers' Compensation Programs, denying her request for a review of the written record. Since more than 180 days elapsed from issuance of the merit decision of February 23, 2009 to the filing of this appeal, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of this case.¹

ISSUE

The issue is whether the Office abused its discretion by denying appellant's request for a review of the written record.

¹ For Office decisions issued prior to November 19, 2008, the Board's regulations provided up to one year to file an appeal. 20 C.F.R. § 5013(d)(2). For Office decisions issued on and after November 19, 2008, a claimant has 180 days to appeal. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On January 9, 2009 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained an emotional condition on November 12, 2008 as a result of harassment by her manager.²

In a February 23, 2009 decision, the Office denied appellant's claim. It found that she did not establish the traumatic incident of November 12, 2008 as alleged and that the medical evidence was not sufficient to support her claim of injury.³

By letter postmarked March 26, 2009, appellant requested a review of the written record.

In a decision dated August 11, 2009, the Office denied appellant's request, finding that it was untimely filed. It considered her request in its discretion and determined that the issue in her case could equally well be addressed by requesting reconsideration by the district Office and submitting evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁴ Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁵ The request "must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."⁶ A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.⁷

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, the Office has the discretionary authority to grant the request and must properly exercise such discretion.⁸

² The employer controverted the claim, noting that appellant was given an interview for disruptive conduct on the workroom floor. Appellant was placed on emergency placement.

³ On January 13, 2009 the Office apprised appellant of the need to submit additional factual and medical evidence in support of her claim.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

⁷ *Leona B. Jacobs*, 55 ECAB 753 (2004).

⁸ *See id.*; *Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

ANALYSIS

The Office denied appellant's traumatic emotional condition claim in a February 23, 2009 decision. It found that she failed to establish the November 12, 2008 incident at work and that the medical evidence was not sufficient to support her claim of injury.

Appellant filed her request for a review of the written record by an Office hearing representative in a letter postmarked on March 26, 2009, received by the Office on April 3, 2009. As her request was not filed within 30 days of the February 23, 2009 decision denying her claim, she was not entitled to a review of the record as a matter of right.

The Office exercised its discretionary authority with regard to appellant's request. It notified her that the issue in her claim could be equally well addressed by requesting reconsideration by the district Office and submitted evidence not previously considered. The only limitation on the Office's discretionary authority is reasonableness.⁹ There is no evidence that it abused its discretion by denying appellant's request for a hearing under these circumstances.¹⁰ The Board has held that this is a reasonable exercise of the Office's discretionary authority.¹¹

CONCLUSION

The Board finds the Office did not abuse its discretion in denying appellant's untimely request for review of the written record.

⁹ See *Hubert Jones, Jr.*, 57 ECAB 467, 473 (2006).

¹⁰ See *André Thyratron*, 54 ECAB 257 (2002).

¹¹ See *G.W.*, 61 ECAB ____ (Docket No. 10-782, issued April 23, 2010); *D.M.*, 60 ECAB ____ (Docket No. 08-1814, issued January 16, 2009); *Steven A. Andersen*, 53 ECAB 367 (2002).

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 29, 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