

FACTUAL HISTORY

On March 19, 2007 appellant, then a 61-year-old mail clerk, filed an occupational disease claim for anxiety, depression, weight loss, hair loss, high blood pressure and post-traumatic stress disorder. She alleged that her physical and emotional problems manifested as a result of her supervisor's "abusive behavior" over a four-year period.

In a decision dated December 14, 2007, the Office denied appellant's claim for compensation benefits due to insufficient evidence that appellant's emotional condition occurred in the performance of duty. It found that the evidence failed to establish that her supervisor's conduct constituted abusive conduct.

In a letter dated September 13, 2009, appellant requested a hearing before the Branch of Hearings and Review.

By decision dated November 13, 2009, the Office denied appellant's hearing request as untimely filed. Exercising its discretion, the Office found that the issue in appellant's case could be equally well addressed by requesting reconsideration and submitting evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant is entitled to an oral hearing or a review of the written record when a request is submitted in writing within 30 days after the issuance of a final decision by the Office.² The Office, through its regulations, has determined that a claimant injured on or after July 4, 1966, who has received a final adverse decision by the Office, may obtain a hearing by writing to the address specified in the decision. The request must be sent within 30 days (as determined by the postmark or other carrier's date marking) of the date of the decision for which a hearing is sought, and the claimant cannot have previously submitted a request for reconsideration on the same decision.³ As section 8124(b)(1) is unequivocal in establishing the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right if the hearing request is made after the 30-day period.⁴

The Office, under 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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request that is untimely made after the established 30-day period and that such discretion is a proper interpretation of the Act.⁵

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.616(a); *Brenton A. Burbank*, 53 ECAB 279 (2002); *D.E.*, 59 ECAB 438 (2008).

⁴ *Claudio Vazquez*, 52 ECAB 496 (2001); *P.P.*, 58 ECAB 673 (2007); *R.T.*, 60 ECAB __ (Docket No. 08-408, issued December 16, 2008).

⁵ *Marilyn F. Wilson*, 52 ECAB 347 (2001); *André Thyratron*, 54 ECAB 257 (2002); *J.C.*, 59 ECAB 206 (2007).

ANALYSIS

The Board finds that appellant did not timely request a hearing. The record establishes that the Office issued a December 14, 2007 decision denying her claim; but appellant's request for an oral hearing was made on September 13, 2009. The Board finds that appellant is not entitled to an oral hearing as a matter of right because her hearing request of September 13, 2009 was not made within 30 days of the December 14, 2007 decision.

The Board also finds that the Office properly exercised its discretion in denying appellant's hearing request. In its November 13, 2009 letter, the Office noted that it carefully considered her request and determined that appellant's concerns could be addressed by requesting reconsideration from the district Office with the submission of additional evidence. The Board finds that appellant's request for a hearing was untimely filed and the Office properly exercised its discretionary authority when denying the request. The Office's decision will be affirmed.

CONCLUSION

The Board finds that appellant's September 13, 2009 hearing request was not timely filed. The Office properly exercised its discretionary authority in denying her request.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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