

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

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H.C., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Brooklyn, NY, Employer

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**Docket No. 11-1424  
Issued: December 19, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 1, 2011 appellant filed a timely appeal from a May 16, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for review of the written record. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for review of the written record.

On appeal, appellant contends that he sent notice to OWCP that he wished to cancel the hearing.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. The findings of fact as set forth in the Board's prior decisions are hereby incorporated by reference.<sup>2</sup> OWCP accepted that appellant sustained a lumbosacral sprain and deep vein thrombosis of the left leg as a result of a December 1, 1975 injury incurred when lifting a mail sack. It also accepted that he sustained a herniated disc from lifting heavy objects at work. OWCP paid compensation for disability and medical benefits. By decision dated September 3, 1997, it terminated appellant's compensation on the basis that he refused an offer of suitable employment. In a March 22, 2001 decision, the Board affirmed the termination of his compensation for refusing an offer of suitable work. The Board remanded the case to resolve a conflict in medical opinion regarding continuing employment-related disability.<sup>3</sup> In a decision dated October 26, 2006, the Board affirmed OWCP decisions of September 19 and 29, 2005 finding that appellant was not entitled to continuing compensation benefits on or after September 2, 1997.<sup>4</sup> By an April 1, 2009 order, the Board dismissed appellant's appeal as there was no final decision of OWCP over which the Board had jurisdiction.<sup>5</sup> In a March 11, 2011 decision, the Board found that OWCP properly denied appellant's request for an oral hearing.<sup>6</sup>

On April 6, 2011 appellant requested review of the written record. By decision dated May 16, 2011, OWCP denied his request. It noted that the last decision in appellant's case was issued by the Board. As decisions of the Board are final, the Branch of Hearings and Review had no jurisdiction to review the Board's decisions. OWCP reviewed appellant's request under its

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<sup>2</sup> In an Order Remanding Case dated May 2, 2005, the Board found that appellant's case was not in posture for decision as OWCP erred in not issuing a formal decision after reviewing the impartial medical opinion. The Board remanded the case for further development of the evidence. Docket No. 99-1295 (issued May 2, 2005). By order dated April 25, 2008, the Board concluded, with regards to Docket No. 07-903, that there was no final adverse decision of OWCP over which it had jurisdiction and dismissed the appeal. In the same order, the Board also found that appellant's appeal in Docket No. 06-474 constituted an untimely petition for reconsideration of the Board's October 26, 2006 decision and dismissed it. Docket Nos. 07-903 & 06-474 (issued April 25, 2008).

<sup>3</sup> Docket No. 99-1295 (issued March 22, 2001). The Board affirmed a September 28, 1998 decision of OWCP's hearing representative.

<sup>4</sup> Docket No. 06-474 (issued October 26, 2006). The Board further found that OWCP properly denied appellant's request for reconsideration.

<sup>5</sup> Docket No. 09-639 (issued April 1, 2009).

<sup>6</sup> Docket No. 10-1566 (issued March 11, 2011). The Board's decision affirmed a January 20, 2010 OWCP's decision.

discretion and determined that it should be denied for the reasons that the issue in the case could be addressed by requesting reconsideration from it and submitting new evidence.<sup>7</sup>

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides:

“Before review under section 8128(a) of this title (related to reconsideration), a claimant for compensation not satisfied with a decision of the Secretary under subsection(a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.<sup>8</sup>

FECA provides OWCP with original jurisdiction in the processing of compensation claims and section 8124(a) provides it with the duty and authority to issue an initial decision on an employee’s claim for compensation.<sup>9</sup> Once an initial decision is made in a compensation case, the claimant’s rights arise by which the claimant may seek further review of his claim, the right to a hearing or review of the written record before OWCP, the right to reconsideration before OWCP or an appeal to the Board. The Board has clarified that OWCP does not have the discretionary authority to grant a request for hearing immediately following a Board decision. OWCP’s Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director.<sup>10</sup> Following the Board’s review of OWCP’s decision, there is no final decision of it left unreviewed over which the Branch of Hearings and Review can assume jurisdiction to exercise its discretionary appellant authority.<sup>11</sup>

### **ANALYSIS**

The Board previously affirmed OWCP’s decisions terminating benefits and decisions finding that appellant was not entitled to compensation benefits after September 2, 1997.<sup>12</sup> OWCP did not issue a final decision on the merits after the Board’s last decision on the merits, issued on October 26, 2006. It did issue a January 20, 2010 decision denying appellant’s request

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<sup>7</sup> The Board notes that on April 13, 2011 appellant filed a claim for a schedule award. On May 10, 2011 OWCP noted that by decision dated September 19, 2005, it terminated his entitlement to wage loss and schedule award compensation was terminated because appellant refused to accept suitable work. It enclosed a copy of that decision and advised appellant to refer to the appeal rights of the decision if he wished to appeal from it. The Board concludes that the May 10, 2011 letter was not a formal decision because it was informational in nature, containing no findings of fact and a statement of reasons. It merely referred appellant to the appeal rights accompanying the September 19, 2005 decision. *See* 20 C.F.R. § 10.126. Accordingly, the Board has no jurisdiction to review it. *See* 20 C.F.R. § 501.2(c).

<sup>8</sup> 5 U.S.C. § 8124(b)(1).

<sup>9</sup> *Id.*

<sup>10</sup> *Patricia G. Aiken*, 57 ECAB 441 (2006); *Eileen A. Nelson*, 46 ECAB 377 (1994).

<sup>11</sup> *Robert N. Thomas*, 51 ECAB 180 (1999); *J.H.*, Docket No. 09-1406 (issued January 14, 2010).

<sup>12</sup> Docket No. 99-1295, *supra* note 2; Docket No. 06-474, *supra* note 3.

for a hearing, a decision that this Board affirmed on March 11, 2011.<sup>13</sup> After the Board's March 11, 2011 decision, appellant requested review of the written record before OWCP. The Board has held that, following its review of OWCP's decision, a claimant does not have the right under 5 U.S.C. § 8124(b)(1) to request an oral hearing or review of the written record in the absence of a final OWCP decision.<sup>14</sup> The Board finds that appellant has no right to a review of the written record following the Board's March 11, 2011 decision. There is no final OWCP decision left unreviewed over which the Branch of Hearings and Review could assume jurisdiction.<sup>15</sup> Therefore, the Board finds that OWCP properly denied appellant's request for a hearing.

On appeal, appellant contends that he wanted OWCP to cancel the hearing and to have the Board decide his case. There was never a hearing or review of the written record scheduled as it was not a proper avenue of appeal open to him. The Board's jurisdiction is limited to considering and deciding appeals from final adverse decisions of OWCP in cases arising under FECA.<sup>16</sup> The Board previously reviewed multiple merit and nonmerit decisions of OWCP. There are no remaining issues on the merits for the Board to discuss.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record before its hearing representative.

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<sup>13</sup> Docket No. 10-1566, *supra* note 5.

<sup>14</sup> *Supra* note 11.

<sup>15</sup> *Id.*

<sup>16</sup> 20 C.F.R. § 501.2(c) and 20 C.F.R. § 501.3(a), respectively.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 16, 2011 is affirmed.

Issued: December 19, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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