

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

H.C., Appellant

and

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

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**Docket No. 10-1566
Issued: March 11, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 25, 2010 appellant filed a timely appeal from a January 20, 2010 decision of the Office of Workers' Compensation Programs denying his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

On appeal, appellant contends that he did not refuse a suitable job offer.¹

¹ On appeal, appellant submitted a new medical report. The Board is precluded from reviewing new evidence on appeal as its review is limited to the evidence before the Office at the time of the final decision. See 20 C.F.R. § 501.2(c)(1).

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.² The Office 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. The Office 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 Office's termination of appellant's 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 based on the medical evidence submitted after the termination of appellant's benefits.³ In a decision dated October 26, 2006, the Board affirmed the Office decisions of September 19 and November 29, 2005 finding that appellant was not entitled to continuing compensation benefits on or after September 2, 1997.⁴ By an April 1, 2009 order, the Board dismissed appellant's appeal as there was no final decision of the Office over which the Board had jurisdiction.⁵

By letter dated October 1, 2009, appellant requested a second hearing before an Office hearing representative.

By decision dated January 20, 2010, the Office Branch of Hearings and Review denied appellant's request for an oral hearing. The Office noted that the most recent merit decision in this case was by the Board and that the Office did not have jurisdiction to review decisions of the Board. It further reviewed appellant's request under its discretionary authority and found that the issue could equally well be addressed by requesting reconsideration and submitting new evidence.

² The Board notes its other decisions and orders in this case as follows. In an Order Remanding Case dated May 2, 2005, the Board found that appellant's case was not in posture for decision as the Office erred in not issuing a formal decision after reviewing the impartial medical opinion and remanded the case for further development of the evidence. Docket No. 99-1295. By order dated April 25, 2008, the Board dismissed appellant's appeals in Docket Nos. 06-474 and 07-903. The Board found that appellant's appeal in Docket No. 06-474 constituted an untimely petition for reconsideration of the Board's October 26, 2006 decision. In Docket No. 07-903, the Board concluded that there was no final adverse decision of the Office over which it had jurisdiction.

³ Docket No. 99-1295 (issued March 22, 2001). The Board's decision affirmed a September 28, 1998 decision of an Office hearing representative.

⁴ Docket No. 06-474 (issued October 26, 2006). The Board further found that the Office properly denied appellant's request for reconsideration.

⁵ Docket No. 09-639 (issued April 1, 2009).

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act 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.”⁶

The Act provides the Office with original jurisdiction in the processing of compensation claims and section 8124(a) provides the Office with the duty and authority to issue an initial decision on an employee's claim for compensation.⁷ Once an initial decision is made in a compensation case, the claimant's rights arise by which the claimant may seek further review of her claim, the right to a hearing before the Office, the right to reconsideration before the Office or an appeal to the Board. The Board has clarified that the Office does not have the discretionary authority to grant a request for hearing immediately following a Board decision. The Office's Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director.⁸ Following the Board's review of an Office decision, there is no final decision of the Office left unreviewed over which the Branch of Hearings and Review can assume jurisdiction to exercise its discretionary appellate authority.⁹

ANALYSIS

Following the Office's September 19, 2005 decision denying compensation benefits and November 29, 2005 nonmerit decision denying reconsideration, appellant requested an appeal to the Board. The Board reviewed the merits of the case and issued an October 26, 2006 decision finding no entitlement to continuing disability and denying further merit review. The Office did not subsequently issue a final decision. On October 1, 2009 appellant requested a hearing before the Office Branch of Hearings and Review. The Board has held that, following its review of an Office decision, a claimant does not have the right under 5 U.S.C. § 8124(b)(1) to request an oral hearing in the absence of a final Office decision.¹⁰ Appellant had no right to an oral hearing following the Board's October 26, 2006 decision. There is no final Office decision left unreviewed over which the Branch of Hearings and Review could assume jurisdiction.¹¹ Therefore, the Board finds that the Office properly denied appellant's request for a hearing.

⁶ 5 U.S.C. § 8124(b)(1).

⁷ *Id.*

⁸ *Patricia G. Aiken*, 57 ECAB 441 (2006); *Eileen A. Nelson*, 46 ECAB 377 (1994).

⁹ *J.H.*, 61 ECAB ____ (Docket No. 09-1406, issued January 14, 2010); *Robert N. Thomas*, 51 ECAB 180 (1999).

¹⁰ *Id.*

¹¹ *Id.* See also *Eileen A. Nelson*, *supra* note 8.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2010 is affirmed.

Issued: March 11, 2011
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board