

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

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**BEVERLY J. O'NEIL, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Nashville, TN, Employer**

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**Docket No. 04-831  
Issued: May 26, 2004**

*Appearances:*  
*Beverly J. O'Neil, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On February 9, 2004 appellant filed a timely appeal from the June 5, 2003 decision of the Office of Workers' Compensation Programs, which denied her request for a hearing. The last merit decision in this case was issued on May 24, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction to review the June 5, 2003 nonmerit decision.

**ISSUE**

The issue is whether the Office properly denied appellant's request for a hearing.

**FACTUAL HISTORY**

This is the third appeal of this case. In a decision issued March 1, 2001,<sup>1</sup> the Board set aside a November 18, 1998 Office decision denying appellant's request for reconsideration of a March 19, 1997 termination decision and remanded the case back to the Office for issuance of a

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<sup>1</sup> Docket No. 99-708 (issued March 1, 2001).

*de novo* decision.<sup>2</sup> The Office subsequently reviewed appellant's claim on the merits and denied modification in a decision dated May 24, 2001. Appellant again requested reconsideration, which the Office denied by decision dated October 17, 2001. A subsequent request for reconsideration was also denied on August 6, 2002. By decision dated February 20, 2003, the Board affirmed an August 6, 2002 decision denying appellant's request for reconsideration.<sup>3</sup> On April 14, 2003 appellant requested a hearing before an Office hearing representative. By decision dated June 5, 2003, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it had no jurisdiction to review a decision of the Board.

### **LEGAL PRECEDENT**

Any 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. 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. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>4</sup> However, the Office has discretion to grant or deny a request that was made after this 30-day period.<sup>5</sup> The Office also has the discretionary authority to grant a request for a second hearing on the same issue.<sup>6</sup> In these instances, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>7</sup> This, however, does not mean that the Branch of Hearings and Review has the discretionary authority to grant a hearing any time it is requested to do so by appellant. The Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Office, which has not previously been reviewed.<sup>8</sup> Thus, the Branch of Hearings and Review may not exercise jurisdiction over an issue that has previously been reviewed by the Board.<sup>9</sup>

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<sup>2</sup> On September 30, 1987 appellant, then a 33-year-old distribution clerk, twisted her lower back at work. The claim was accepted for lumbar strain, L5-S1 nerve root radiculopathy and later psychogenic pain disorder. On March 19, 1997 the Office terminated compensation. Appellant disagreed with the termination and exercised her appeal rights on many occasions prior to her appeal to the Board.

<sup>3</sup> Docket No. 03-199 (issued February 20, 2003).

<sup>4</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>5</sup> *Claudio Vazquez*, 52 ECAB 496, 499-500 (2001).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Eileen A. Nelson*, 46 ECAB 377, 381 (1994).

<sup>9</sup> *Id.* at 382.

### ANALYSIS

In the present case, following issuance of the Office's August 6, 2002 decision denying reconsideration appellant exercised her appellate rights by requesting an appeal to the Board. The Board reviewed the case and issued its decision on February 20, 2003. On April 14, 2003 appellant requested a hearing before the Branch of Hearings and Review. As the last decision in this case was the Board's February 20, 2003 decision, appellant was requesting that the Office grant a hearing to review the Board's decision. The Branch of Hearings and Review may not exercise jurisdiction over an issue that has previously been reviewed by the Board.<sup>10</sup> After the Board's February 20, 2003 decision, there were no final decisions of the Office left unreviewed over which the Branch of Hearings and Review could assume jurisdiction to exercise its discretionary authority. The Office, therefore, properly denied appellant's request for a hearing.

### CONCLUSION

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

### ORDER

**IT IS HEREBY ORDERED THAT** the June 5, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: May 26, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>10</sup> *Id.*