

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

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**B.D., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,  
Long Beach, CA, Employer** )

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**Docket No. 10-411  
Issued: September 14, 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  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 30, 2009 appellant filed a timely appeal of an October 30, 2009 decision of the Office of Workers' Compensation Programs which denied her request for a hearing. However, more than one year has elapsed between the most recent merit decision of September 29, 1993 and the filing of this appeal, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board only has jurisdiction to review the October 30, 2009 nonmerit decision.<sup>1</sup>

**ISSUE**

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

**FACTUAL HISTORY**

On July 18, 1990 appellant, then a 36-year-old postal clerk, filed an occupational disease claim, alleging that she sustained rheumatoid arthritis and stress while in the performance of duty. Appellant alleged that she realized the disease or illness was caused by her employment on

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<sup>1</sup> For Office decisions issued prior to November 19, 2008 a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2009).

October 29, 1984. She reported her condition to her supervisor on June 20, 1986. Appellant did not initially stop work. The Office accepted the claim for aggravation of seropositive rheumatoid arthritis in the hands. Appellant received appropriate compensation.

On July 18, 1993 appellant filed a notice of recurrence. She alleged a recurrence of disability for the period January 17 to 21, 1993.

In a September 29, 1993 decision, the Office denied appellant's claim for compensation for disability for the period January 17 to 21, 1993. It found that appellant had not submitted sufficient medical evidence and that she did not establish work-related disability for the period at issue.

On May 26, 2009 appellant claimed a schedule award. In a September 1, 2009 letter, the Office informed appellant that a schedule award could not be processed as her claim was denied on September 29, 1993.

On September 10, 2009 appellant requested a hearing. She indicated that she would like a hearing for a schedule award. Appellant noted that she had aggravation of rheumatoid arthritis of the right and left hand on June 20, 1986.

In a decision dated October 30, 2009, the Office found that appellant was not entitled to a hearing for the reason that her request was not made within 30 days of the issuance of its September 29, 1993 decision. It exercised its discretion and determined that it would not grant a hearing for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered which established that she continued to suffer residuals from her accepted injury.

### **LEGAL PRECEDENT**

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.<sup>2</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."<sup>3</sup>

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provides, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing 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."<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 10.616(a).

The Office's regulations provide that a request received more than 30 days after the Office's decision is subject to its discretion<sup>5</sup> and the Board has held that the Office must exercise this discretion when a hearing request is untimely.<sup>6</sup>

### ANALYSIS

Appellant requested a hearing on September 10, 2009. The Board notes that the request for a hearing was more than 30 days after the Office issued its September 29, 1993 decision. However appellant did not request a hearing within 30 day of the September 29, 1993 decision, she was not entitled to a hearing as a matter of right.

The Office properly exercised its discretion in denying a hearing upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting new evidence.<sup>7</sup> There is no evidence of record that the Office abused its discretion in denying appellant's request for a hearing under these circumstances

On appeal appellant asserts that she is seeking a schedule award. The record indicates that she filed a claim for a schedule award on May 26, 2009. As the Office has not yet issued a final decision on the schedule award claim, the Board does not have jurisdiction over this matter.<sup>8</sup> As noted, the Board only has jurisdiction over the Office's October 30, 2009 decision denying appellant's hearing request.

### CONCLUSION

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

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<sup>5</sup> *Id.* at § 10.616(b).

<sup>6</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

<sup>7</sup> The only limitation on the Office's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and deductions from known facts. *See Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>8</sup> In a September 1, 2009 letter, the Office indicated that a schedule award could not be processed as her claim for a period of disability was denied on September 29, 1993. The Board has held that a prior determination that a claimant was not disabled did not preclude the possibility that the claimant might develop an impairment related to an accepted condition at a later date. *A.A.*, 59 ECAB \_\_\_\_ (Docket No. 08-951, issued September 22, 2008). Regarding the Board's jurisdiction, *see* 20 C.F.R. §§ 501.2(c), 501.3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 30, 2009 is affirmed.

Issued: September 14, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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