United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 10-1580**
	)	**Issued: February 24, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Mount Vernon, KY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 25, 2010 appellant filed a timely appeal from the January 20, 2010 nonmerit decision of the Office of Workers' Compensation Programs which denied his request for a review of the written record as untimely. Because more than 180 days elapsed between the most recent Office merit decision of October 6, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of his case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for a review of the written record as untimely.

FACTUAL HISTORY

On August 25, 2009 appellant, then a 45-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 2009 he was in a motor vehicle accident while in the performance of duty. He claimed that he had pain and stiffness in his neck, left shoulder, right shoulder blade, low back, left elbow and left hand. Appellant did not stop work at the time

of the alleged injury. On August 17, 2009 he was treated in a local emergency room. Appellant submitted an authorization for examination and/or treatment (Form CA-16) pay rate information and letters from the employing establishment in support of his claim.

On September 1, 2009 the Office requested additional factual and medical information from appellant. It allotted him 30 days to submit a response to its inquiries.

Appellant submitted a September 2, 2009 medical report by an unidentified author and a September 9, 2009 medical note by Dr. Syd Egenhauser, a chiropractor, excusing him from work. He also submitted a September 21, 2009 duty status report (Form CA-17), a September 10, 2009 narrative statement, and an August 17, 2009 traffic collision police report. Appellant resubmitted documents previously of record.

By decision dated October 6, 2009, the Office denied the claim finding that appellant did not submit sufficient medical evidence to establish that he sustained an employment injury on August 17, 2009.

By form postmarked November 10, 2009 and received by the Office on November 16, 2009, appellant requested a review of the written record by an Office hearing representative, in connection with his claim.

By decision dated January 20, 2010, the Office denied appellant's request for a review of the written record. It found that his request was untimely because it was not made within 30 days of its October 6, 2009 decision. The Office exercised its discretion and further denied appellant's request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by the Office.[1]

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

> "Before review under section 8128(a) of this title [relating 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."[2]

[1] The Board notes that, following the issuance of the January 20, 2010 Office decision and on appeal, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal written request for reconsideration to the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

[2] 5 U.S.C. § 8124(b)(1).

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."[3]

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.[4] The Office has discretion, however, to grant or deny a request that is made after this 30-day period.[5] In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.[6]

ANALYSIS

Appellant had 30-calendar days from the Office's October 6, 2009 decision, or until November 5, 2009, to request a review of the written record. Because his request was postmarked November 10, 2009, it was untimely. Appellant was not entitled to a review of the written record as a matter of right under section 8124(b)(1) of the Act. Exercising its discretion to grant a review of the written record, the Office denied appellant's request on the grounds that he could equally well address any issues in his case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by the Office's October 6, 2009 decision, the Board finds that the Office did not abuse its discretion in denying appellant's untimely request for a review of the written record.[7]

CONCLUSION

The Board finds that the Office properly denied appellant's request for a review of the written record.

[3] 20 C.F.R. § 10.615.

[4] *Id*. at § 10.616(a).

[5] *G.W.*, 61 ECAB ___ (Docket No. 10-782, issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

[6] *Id. See also Rudolph Bermann*, 26 ECAB 354 (1975).

[7] *Gerard F. Workinger*, 56 ECAB 259 (2005).

ORDER

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

Issued: February 24, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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