

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE S. BLAKE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Denver, CO

*Docket No. 98-1355; Submitted on the Record;
Issued July 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On May 16, 1988 appellant, then a 28-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on May 13, 1988, as part of his employment, he was walking down a step and fell, which caused pain in the lower part of his back.

On October 20, 1988 the Office accepted appellant's claim for a back strain and awarded compensation for wage loss.

On January 28, 1997 the Office further awarded appellant compensation under the schedule based on a four percent permanent impairment to his right leg.

In a letter postmarked December 1, 1997 and received by the Office on December 8, 1997, appellant requested an appeal of this January 28, 1997 award under the schedule. At that time, he further requested an oral hearing.

By decision dated January 26, 1998, the Office denied appellant's request for an oral hearing, finding that it was not timely filed. The Office also reviewed the case under its discretionary authority and further denied appellant's request.

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

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 an oral hearing must be submitted, in writing, within 30 days of the date of issuance of the decision. A claimant is not entitled to a hearing if the request is not made within 30 days of the date of the

issuance of the decision, as determined by the postmark of the request.¹ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.² In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.³

The decision from which appellant requests a hearing was the schedule award issued on January 28, 1997. Because appellant made his request for an oral hearing on December 1, 1997, more than 30 days after the Office's January 28, 1997 decision on the merits, he is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether appellant suffered a permanent impairment to the right leg of greater than four percent could equally well be addressed by requesting reconsideration from the district office. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.⁴

The decision of the Office of Workers' Compensation Programs dated January 26, 1998 is hereby affirmed.

Dated, Washington, D.C.
July 13, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ 20 C.F.R. § 10.131(a).

² *Herbert C. Holley*, 33 ECAB 140 (1981).

³ *Rudolph Bermann*, 26 ECAB 354 (1975)

⁴ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion; *see, e.g., Jeff Micono*, 39 ECAB 617 (1988).