

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMONITO G. JONTILANO and U.S. POSTAL SERVICE,
MLSP& DISTRIBUTION CENTER, San Diego, CA

*Docket No. 00-166; Submitted on the Record;
Issued January 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs, by its July 12, 1999 decision, properly denied appellant's oral hearing request on the grounds that it was untimely filed.

In December 1996 appellant, then a 50-year-old mailhandler, sustained lower back pain causally related to factors of his federal employment. The Office accepted his occupational disease claim for lumbar subluxation.

By letter dated December 29, 1997, the Office notified appellant that it proposed to terminate his compensation benefits on the grounds that the medical evidence of record established that he did not have residuals or further need for medical treatment related to his accepted lumbar subluxation. The Office allotted appellant 30 days within which to submit evidence supportive of his claim. Appellant did not respond within the allotted time.

By decision dated January 30, 1998, the Office terminated appellant's benefits.

On March 4, 1999 appellant submitted a second occupational disease claim alleging that he first became aware that he sustained lower back pain in December 1996.

By letter dated April 22, 1999, the Office informed appellant that the March 4, 1999 claim was duplicative of his previous claim for which it terminated benefits by its January 30, 1998 decision.

In a memorandum to the file dated April 27, 1999, the Office noted that appellant asserted that he did not receive appeals rights with its January 30, 1998 decision. By letter dated April 27, 1999, the Office stated that its records showed that it mailed an appeal rights enclosure with its January 30, 1998 decision and enclosed a second copy of that decision and attached appeals rights.

By letter dated and postmarked May 24, 1999, appellant, through his attorney, requested an oral hearing before an Office hearing representative. He alleged that he did not receive notice of his appeal rights until he received the Office's April 27, 1999 letter.

By decision dated July 12, 1999, the Office denied appellant's oral hearing request on the grounds that it was untimely filed. The Office further reviewed the request and denied it finding that the issue could equally be reached through a reconsideration request.

The Board finds that the Office, by its July 12, 1999 decision, denied appellant's May 24, 1999 hearing request as untimely.

The only decision before the Board on this appeal is the Office's decision dated July 12, 1999 in which appellant's hearing request was denied. Since more than one year had elapsed between the date of the Office's most recent merit decision dated January 30, 1998 and the filing of appellant's appeal on August 30, 1999, the Board lacks jurisdiction to review the merits of his claim.¹

Section 8124 of the Federal Employee's Compensation Act² provides that a claimant is entitled to a hearing before an Office hearing representative when a request is made within 30 days after issuance of a final Office decision.³

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁴ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing request when such request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.⁵

In the present case, appellant's May 24, 1999 hearing request was made more than 30 days after the date of issuance of the Office's January 30, 1998 decision and, thus, he was not entitled to a hearing as a matter of right.

The Office, in its July 12, 1999 decision, properly exercised its discretion by considering the matter of appellant's hearing request in relation to the issue involved and further denied his request on the basis that it could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of

¹ 20 C.F.R. § 501.3(d)(2). Appellant has submitted additional medical evidence pursuant to his March 4, 1999 claim. However, the March 4, 1999 decision is not before the Board on this appeal.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124.

⁴ *Linda J. Reeves*, 48 ECAB 373, 377 (1997).

⁵ *Id.*; see *Michael J. Welsh*, 40 ECAB 994 (1989).

judgment or actions taken which are contrary to both logic and probable deduction from established facts.⁶

Regarding appellant's receipt of appeals rights, under the "mailbox rule" it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.⁷ In this case, the record indicates that the Office's January 30, 1998 decision was mailed to appellant's correct address with appeal rights attached.⁸

As the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a hearing which could be found to be an abuse of discretion, the Office properly denied appellant's request for a hearing.

The decision of the Office of Workers' Compensation Programs dated July 12, 1999 is hereby affirmed.

Dated, Washington, DC
January 3, 2001

Michael J. Walsh
Chairman

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁶ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁷ *Clara T. Norga*, 46 ECAB 473 (1995).

⁸ The record indicates that on March 23, 1999, appellant informed the Office by telephone that his address had changed. On May 21, 1999 he secured legal representation.