

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE M. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, NY

*Docket No. 01-2167; Submitted on the Record;
Issued April 23, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for an oral hearing before an Office hearing representative under 5 U.S.C. § 8124(b)(1).

This is appellant's second appeal before the Board. In a September 1, 2000 decision, the Board determined that the Office did not abuse its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1) and found that the refusal of the Office to reopen appellant's case for further reconsideration of the merits did not constitute an abuse of discretion.¹

The Board finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

The only decision before the Board on this appeal is the Office's August 6, 2001 nonmerit decision denying appellant's untimely request for an oral hearing under 5 U.S.C. § 8124 (b)(1). Because more than one year has elapsed between the issuance of the Office's October 2, 1995 merit decision and April 10, 2000, the postmarked date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the October 2, 1995 merit decision.²

¹ Docket No. 99-1958 (issued September 1, 2000). The Board affirmed the Office's May 7 and June 11, 1999 nonmerit decisions.

² See 20 C.F.R. § 501.3(d)(2).

The Board finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

Section 8124(b)(1) of the Federal Employees' Compensation Act provides in pertinent part as follows:

"Before review under § 8128(a) of this title, 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 issuance of the decision, to a hearing on his claim before a representative of the Secretary."³

The Office's procedures implementing this section of the Act are found in the Code of Federal Regulations at 20 C.F.R. § 10.616(a). This paragraph notes as follows:

"A claimant, injured on or after July 4, 1966, who has 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 the postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."

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 of such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁴ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request when the request is made after the 30-day period for requesting a hearing.⁵ In this instance, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁶ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely, are a proper interpretation of the Act and Board precedent.⁷

In this case, the Office issued its most recent merit decision denying appellant's claim on October 2, 1995.⁸ Appellant requested a second hearing in a May 26, 2001 letter, received by the Office on June 1, 2001. A hearing request must be made within 30 days of the issuance of

³ 5 U.S.C. § 8124(b)(1).

⁴ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982) (request for a second hearing).

⁵ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁶ *See supra* note 4.

⁷ *See Linda J. Reeves*, 48 ECAB 373 (1997); *William E. Seare*, 47 ECAB 663 (1996); *Herbert C. Holley*, *supra* note 5; *Rudolph Bermann*, 26 ECAB 354 (1975).

⁸ However, as the Board issued its decision on September 1, 2000 the 30-day time limitation begins to run from that point.

the decision as determined by the postmark of the request.⁹ Since appellant did not request a hearing within 30 days of the Office's decision of October 2, 1995, she was not entitled to a hearing under section 8124 as a matter of right.

The Office, in its discretion, considered appellant's hearing request in its August 6, 2001 decision and denied the request on the basis that appellant could pursue her claim by requesting reconsideration by the Office and by submitting additional evidence not previously considered.

The Office did not abuse its discretion by refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

The August 6, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 23, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ 20 C.F.R. § 10.616(a).