

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

CAROL M. CHOSTNER, Appellant)

and)

DEPARTMENT OF THE NAVY, MARINE)
CORPS BASE, CAMP PENDLETON, CA,)
Employer)

**Docket No. 05-1197
Issued: August 11, 2005**

Appearances:
R.T. Lee, III, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On May 9, 2005 appellant filed a timely appeal of a March 4, 2005 decision of the Office of Workers' Compensation Programs that found she was not entitled to a hearing because her request was not timely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the March 4, 2005 decision.

ISSUE

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

FACTUAL HISTORY

On December 10, 2003 appellant, then a 46-year-old special assistant, filed a claim for compensation for an occupational disease of emotional stress, anxiety and depression. The Office denied this claim by decision dated July 16, 2004.

By letter dated August 16, 2004, postmarked the same day, appellant requested a hearing before an Office hearing representative. By decision dated March 4, 2005, the Office found that she was not entitled to a hearing as a matter of right because her request was not made within 30 days.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act,¹ concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 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 the issuance of the decision, to a hearing on her claim before a representative of the Secretary." The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.²

The Office regulations implementing the Act provide that a claimant is not entitled to an oral hearing if the request is not 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.³ In computing the time period, the date of the event from which the designated period of time begins to run shall not be included while the last day so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.⁴ The Board has applied this rule to requests for hearings.⁵

ANALYSIS

The Office's decision denying appellant's claim for an emotional condition was issued on July 16, 2004. The time to request a hearing began to run on July 17, 2004 and 30 days from that date was August 15, 2004 (July has 31 days). Since August 15, 2004 fell on a Sunday, appellant's hearing request sent on August 16, 2004 was timely.

CONCLUSION

Appellant's request for a hearing on the Office's July 16, 2004 decision was timely and she is entitled to a hearing as a matter of right.

¹ 5 U.S.C. § 8124(b)(1).

² *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

³ 20 C.F.R. § 10.615.

⁴ *John B. Montoya*, 43 ECAB 1148, 1151 (1992).

⁵ *Joan M. VanDenBerg*, Docket No. 02-2141 (issued February 12, 2003); *Tony Kittredge*, Docket No. 97-2141 (issued August 12, 1999).

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2005 decision of the Office of Workers' Compensation Programs is reversed and the case remanded to the Office to hold a hearing.

Issued: August 11, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board