

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA A. CEBALLAS and U.S. POSTAL SERVICE,  
LAUREL CANYON CARRIER ANNEX, North Hollywood, Calif.

*Docket No. 96-361; Submitted on the Record;  
Issued September 14, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a written review of the record.

On April 18, 1995 appellant, then a 35-year-old distribution clerk, filed a notice of traumatic injury, claiming that as she crossed the darkened parking lot on her way to work, she became entangled in plastic banding strips and fell, injuring her right wrist, elbow, and hip, and scraping both knees. Appellant was treated later that morning by Dr. Jeffrey Nordella, Board-certified in emergency medicine, who released her for full duty on April 21, 1995.

Following a telephone conference, the employing establishment controverted the claim on the grounds that appellant was not in the performance of duty because she was on her way to work and the parking lot was not federal property.

On July 6, 1995 the Office rejected appellant's claim on the grounds that appellant's fall occurred off the employing establishment's property and therefore she was not within the performance of duty. The Office noted that the employing establishment leased part of the parking lot to maintain postal vehicles, but that appellant rented her parking space from a private company.

By letter dated August 8, 1995 and postmarked August 9, 1995, appellant requested a written review of the record and submitted affidavits and documents in support of her argument that her fall took place on the employing establishment's premises. In a letter dated August 26, 1995, the Office denied a written review of the record on the grounds that appellant's request was made more than 30 days from the date of the July 6, 1995 decision. The Office informed appellant that she could request reconsideration to resolve the issue.

The Board finds that appellant's request for a written review of the record was untimely filed.

The Federal Employees' Compensation Act<sup>1</sup> is unequivocal that a claimant not satisfied with a decision of the Office has a right, upon timely request, to an oral hearing before a representative of the Office.<sup>2</sup> The statutory right to a hearing pursuant to section 8124(b)(1) follows an initial decision of the Office.<sup>3</sup> Because subsection (b)(1) is unequivocal on the time limitation for requesting a hearing, a claimant is not entitled to such hearing as a matter of right unless his or her request is made within the requisite 30 days.<sup>4</sup>

The regulation implementing section 8124(b)(1) provides that a claimant may request a review of the written record in lieu of the oral hearing, but the same rules apply.<sup>5</sup> The regulation is clear that a claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of issuance of the decision.<sup>6</sup> Section 10.131(b) is equally clear that the date on which the request is deemed "made" should be "determined by the postmark of the request," rather than any other date.<sup>7</sup>

In this case, appellant argues that the Office envelope which contained the July 6, 1995 decision was postmarked July 10, 1995 and that, therefore, under the mailbox rule, the 30 days did not begin to run until the later date. However, the regulation provides that the date of issuance of the decision, July 6, 1995, is controlling, not the date on which the Office mails the decision. Further, under the mailbox rule the Board has held that in the absence of evidence to the contrary, it is presumed that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>8</sup> Here, appellant acknowledges receipt of the July 6, 1995 decision.

Nonetheless, even when the request for a written review is not timely, the Office has the discretion to grant such review, and must exercise that discretion.<sup>9</sup> Here, the Office informed appellant in its July 6, 1995 decision that it had considered the matter in relation to the issue involved and denied a written review on the basis that she could request reconsideration and submit evidence in support of her claim that she fell on federal property.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8124(b); *Joe Brewer*, 48 ECAB \_\_\_\_ (Docket No. 95-603, issued March 21, 1997); *Coral Falcon*, 43 ECAB 915, 917 (1992).

<sup>3</sup> *Eileen A. Nelson*, 46 ECAB 377 (1994); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10(b) (July 1993).

<sup>4</sup> *William F. Osborne*, 46 ECAB 198 (1994).

<sup>5</sup> 20 C.F.R. § 10.131(b).

<sup>6</sup> *Coral Falcon*, 43 ECAB 915, 918 (1992).

<sup>7</sup> *Leo F. Barrett*, 40 ECAB 892, 895 (1989).

<sup>8</sup> *Charles R. Hibbs*, 43 ECAB 699, 701 (1992).

<sup>9</sup> *Frederick D. Richardson*, 45 ECAB 454, 465 (1994).

The Board has held that the only limitation on the Office's authority is reasonableness,<sup>10</sup> and that abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>11</sup>

In this case, nothing in the record indicates that the Office committed any abuse of discretion in denying appellant's request for a review of the record. Appellant was fully advised that she could request reconsideration and submit evidence in support, and appellant has offered no argument to justify further discretionary review by the Office.<sup>12</sup> Thus, the Board finds that the Office did not abuse its discretion in denying appellant's request for a written review of the record.

Dated, Washington, D.C.  
September 14, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> *Wanda L. Campbell*, 44 ECAB 633, 640 (1993).

<sup>11</sup> *Wilson L. Clow, Jr.*, 44 ECAB 157, 175 (1992).

<sup>12</sup> *Cf. Brian R. Leonard*, 43 ECAB 255, 258 (1992) (finding that the Office abused its discretion by failing to consider appellant's explanation regarding the untimely filing of his hearing request).