

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDUARDO DELAGARZA and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 98-150; Submitted on the Record;
Issued August 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

In the present case, appellant filed a claim for an occupational injury on April 9, 1997 alleging that on August 8, 1991 he was first aware that several employment injuries contributed to his spondylosis condition. The Office denied appellant's claim on July 15, 1997, on the grounds that appellant had not established fact of injury. The Office noted that appellant had not described the employment injuries sufficiently for the Office to determine whether he had sustained an injury at the time, place and in the manner alleged and appellant had not submitted any medical evidence to substantiate that he had sustained an injury.

In a letter postmarked August 15, 1997, appellant requested a hearing before an Office hearing representative and submitted a lengthy statement as well as medical evidence. By decision dated September 11, 1997, the Office denied appellant's request for a hearing on the grounds that the request was not timely made. The Office nevertheless exercised its discretion, considered appellant's request and determined that this issue in the case could be addressed equally well with a request for reconsideration by the Office.¹

The Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act² provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with

¹ Appellant indicated in his appeal to the Board that he was appealing the September 11, 1997 decision, denying his request for a hearing.

² 5 U.S.C. § 8124(b)(1).

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 his claim before a representative of the Secretary.”

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.³ Appellant’s request for a hearing was postmarked on the 31st day. As appellant did not request a hearing within 30 days of the decision, appellant was not entitled to a hearing as a matter of right. The Office, however, 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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office’s procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely, or made after reconsideration under section 8128(a) are a proper interpretation of the Act and Board precedent. In the present case, the Office did exercise its discretion and determined that the issue could be equally addressed by a request for reconsideration before the Office. The Board therefore finds that the Office did not abuse its discretion in this case.

The decision of the Office of Workers’ Compensation Programs dated September 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
August 17, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ 20 C.F.R. § 10.131(a)(b).