

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALEX MONEY and DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS, Crownpoint, NM

*Docket No. 99-1231; Submitted on the Record;  
Issued April 10, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely filed.

On October 11, 1979 appellant, then a 58-year-old-heating mechanic, filed a notice of traumatic injury and claim for compensation alleging that he sustained an injury to his neck and back in the performance of duty on September 21, 1979. The Office accepted the claim for a lumbosacral and cervical strain. Appellant received continuation of pay from November 17, 1979 to January 26, 1980 and was placed on the periodic rolls for wage-loss compensation.

On August 29, 1997 the Office issued a notice of proposed termination of compensation and medical benefits. The Office determined that the weight of the evidence, resting with the opinion of an Office referral physician, established that appellant no longer had any continuing disability or residuals related to the accepted work injury of September 21, 1979.

In a decision dated December 3, 1997, the Office terminated appellant's compensation effective December 6, 1997.

In a letter date stamped as received by the district Office on January 5, 1998, appellant requested a hearing. This letter was forwarded to the Branch of Hearings and Review on January 21, 1998.

In a decision dated February 26, 1998, the Office denied appellant's hearing request as untimely filed. After performing a discretionary review of appellant's hearing request, the Office further noted that the issue in the case could be equally well addressed through the reconsideration process.

In a decision dated January 19, 1999, the Office also stated that a hearing request by appellant on November 1, 1998 was untimely filed. The Board notes that a November 1, 1998

hearing request is not contained in the record, rather it appears appellant's request was dated December 24, 1998.

The Board only has jurisdiction to review Office decisions filed within one year of a claimant's appeal on February 4, 1999. Consequently, the only Office decisions before the Board are dated January 19, 1999 and February 26, 1998 which denied his requests for a hearing. The Board does not have jurisdiction to review the Office's December 3, 1997 decision terminating appellant's compensation benefits.<sup>1</sup>

The Board finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

"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 his claim before a representative of the Secretary."<sup>2</sup>

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.<sup>3</sup> The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>4</sup> In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>5</sup>

In the instant case, appellant's request for an oral hearing was received by the Office on January 5, 1998, more than 30 days after the Office's December 3, 1997 decision. Appellant's request was undated and there is no postmark or other evidence of mailing to indicate the request was submitted within 30 days of the Office's December 3, 1997 decision. Similarly, appellant's November 1, 1998 hearing request is almost ten months after the Office's merit decision. Consequently, appellant is not entitled to a hearing as a matter of right.

Although the Office properly found appellant's hearing requests to be untimely filed, in each instance, the Office considered the matter in relation to the issue involved, and correctly advised appellant that he could pursue his claim through the reconsideration process. As appellant had the opportunity to pursue his claim by submitting to the appropriate regional

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<sup>1</sup> The Board also does not have jurisdiction to review evidence submitted by appellant subsequent to the Office's December 3, 1997 decision; *see* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.131(a)-(b).

<sup>4</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>5</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

Office new and relevant medical evidence along with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.<sup>6</sup>

The decisions of the Office of Workers' Compensation Program dated January 19, 1999 and February 26, 1998 are hereby affirmed.

Dated, Washington, D.C.  
April 10, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).