

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY R. CROCKER and U.S. POSTAL SERVICE,
CHESHIRE POST OFFICE, Cheshire, CT

*Docket No. 99-2243; Submitted on the Record;
Issued October 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs' denial of appellant's request for an oral hearing pursuant to section 8124 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On January 30, 1998 appellant, then a 44-year-old clerk, filed an occupational disease claim for a right wrist condition sustained in the performance of duty on or before January 29, 1998. She listed her address as "205 Church St[reet], Yalesville, CT 06492."¹

In a February 2, 1998 form report, Dr. Jennifer Patten, an attending physician, diagnosed right de Quervain's tenosynovitis and released appellant to restricted duty. The form report notes appellant's address as "205 Church St[reet], Yalesville, CT 06492." In a February 20, 1998 report, Dr. Patten diagnosed "[r]esolving right de Quervain's tenosynovitis," recommended a wrist brace and released appellant to full duty.

The case summary sheet and a computerized "transfer-in worksheet," both prepared by the Office on February 10, 1998, list appellant's address as "205 Church St[reet], Yalesville, CT 06492."

By decision dated April 22, 1998, the Office denied appellant's claim on the grounds that causal relationship was not established. The Office found that she submitted insufficient rationalized medical evidence establishing a causal relationship between the claimed right de Quervain's tendinitis and duties of her federal employment. The decision was addressed to appellant at "205 Church St[reet], Yalesville, CT 06492. Appropriate appeal rights were

¹ In a February 13, 1998 letter, the Office advised appellant of the type of medical and factual evidence needed to establish her claim, including a rationalized report from her attending physicians explaining how and why her federal employment duties would cause or contribute to the claimed medical condition.

enclosed, in which the Office noted that a request for an oral hearing “must be postmarked within 30 days of the date of this decision.”

In a May 6, 1999 letter, appellant alleged that she was not informed of the April 22, 1998 decision until May 4, 1999 when a healthcare provider informed her of the Office’s denial of her claim. She then spoke with her postmaster, who found a copy of the Office’s April 22, 1998 decision. Appellant alleged that she did not receive the Office’s April 22, 1998 decision or “any correspondence from the [Office] in regards to [her] medical claim.”² She submitted additional evidence.³

In a letter dated and postmarked May 14, 1999, appellant requested an oral hearing in her case. She listed her address as “205 Church Street, Yalesville, CT 06492.”

By decision dated June 14, 1999, the Office’s Branch of Hearings and Review denied appellant’s request for an oral hearing on the grounds that it was untimely under section 8124 of the Act. The Office noted that the last decision of record was issued on April 22, 1998 and appellant’s request for an oral hearing “was postmarked May 14, 1999,” more than 30 days after the April 22, 1998 decision. The Office noted considering the request, and denied it on the additional grounds that the issue involved could be addressed equally well on reconsideration by submitting new evidence establishing causal relationship.

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

Section 8124(b)(1) of the Act provides, in pertinent part, that a “claimant for compensation not satisfied with the decision of the Secretary ... 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.”⁴ As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁵

In this case, the Office issued its decision denying appellant’s claim on April 22, 1998. Appellant requested a hearing in this matter by a letter dated and postmarked May 6, 1999. The Board notes that appellant was provided with appropriate appeal rights accompanying the April 22, 1998 decision, which stated explicitly that a request for an oral hearing “must be postmarked within 30 days of the date of this decision.” As appellant’s request for a hearing was

² Appellant listed her address on this letter as “205 Church St[reet], Yalesville, CT 06492.”

³ Appellant submitted physical therapy notes dated January 30 to February 20, 1998 physical therapy notes and a February 9, 1998 report by Dr. Patten diagnosing right de Quervain’s tenosynovitis requiring medication and physical therapy. In a second May 6, 1999 letter, she attributed her right wrist condition to lifting, unwrapping and “unstrapping bundles of magazines and newspapers” weighing from 3 to 15 pounds, and casing or sorting the publications into an upright case, for 8 to 10 hours per day, 5 to 6 days per week.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ *Delmont L. Thompson*, 51 ECAB ____ (Docket No. 97-988, issued November 1, 1999); *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

not within 30 days of the Office's April 22, 1998 decision, she is not entitled to a hearing under section 8124 as a matter of right.

Nonetheless, even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, in its decision dated June 14, 1999, the Office advised appellant that it considered her request in relation to the issue involved and the hearing was also denied on the grounds that she could address the issue equally well on reconsideration, by submitting new medical evidence establishing causal relationship. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.⁶ The Board finds that in this case, there is no evidence that the Office abused its discretion in denying appellant's request for a hearing.

The Board notes that appellant alleged that her request for an oral hearing was untimely as she was unaware of the April 22, 1998 decision until May 4, 1999 and thus could not request the hearing any sooner. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.⁷

The Office's records list appellant's address as "205 Church St[reet], Yalesville, CT 06492." A February 13, 1998 development letter from the Office, as well as the April 22, 1998 decision, were apparently mailed to appellant at her Church Street address. Appellant's May 6, 1999 correspondence also shows the Church Street address. Thus, the record demonstrates that the Office was aware of appellant's address of record and that all correspondence was correctly addressed to appellant at her address of record. There is no evidence of record, other than appellant's allegation, that the Office failed to mail her the April 22, 1998 decision or other correspondence. Thus, the Board finds that appellant is presumed to have received the April 22, 1998 decision in a timely manner.

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁷ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

The decision of the Office of Workers' Compensation Programs dated June 14, 1999 is hereby affirmed.

Dated, Washington, DC
October 6, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member