

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNY C. QUINATA and U.S. POSTAL SERVICE,
LOS ANGELES BULK MAIL CENTER, Bell, CA

*Docket No. 00-1371; Submitted on the Record;
Issued April 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to a schedule award for permanent impairment due to his accepted employment-related injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative.

On November 9, 1998 appellant, then a 50-year-old mailhandler, filed a notice of occupational disease and claim for compensation alleging that he sustained bilateral carpal tunnel syndrome due to repetitious pulling of sacks of mail and keying in his federal employment. By letter dated January 5, 1999, the Office accepted his claim for bilateral carpal tunnel syndrome. He underwent a left carpal tunnel release on October 20, 1998 and a right carpal tunnel release on December 8, 1998. Appellant returned to work on January 24, 1999.

On May 6, 1999 appellant filed a claim for compensation for a schedule award.

In a decision dated October 4, 1999, the Office denied appellant's claim for a schedule award as appellant had no permanent impairment to a scheduled member of the body due to his employment-related condition.

By letter dated November 3, 1999 and stamped received by the Office on November 16, 1999, appellant requested an oral hearing.

On December 29, 1999 the Office denied appellant's request for an oral hearing, finding that as the decision was rendered on October 4, 1999 and the request for an oral hearing was postmarked November 16, 1999, the request was untimely. The Office also reviewed appellant's request under its discretionary authority and determined that the request was further denied for the reason that the issue could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered by the Office.

The Board finds that the Office improperly denied appellant's request for a hearing before the Office hearing representative.

Section 8124(b) of the Federal Employees' Compensation Act provides 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."¹ As section 8124(b) 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.² Therefore, a request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of issuance of the decision.³ Under the regulations implementing this section, the postmark of the request determines the date of the request.⁴ Even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion.⁵

In the case at hand, the Office, in its decision of December 19, 1999, noted that appellant's request was postmarked November 16, 1999. The Board, after a careful review of the record, is unable to determine how the Office arrived at this conclusion. In his letter dated November 3, 1999, appellant requested an oral hearing with respect to the October 4, 1999 decision. The Office stamped this letter as received on November 16, 1999. However, there is no envelope or other indication in the record as to when the request was postmarked.⁶ The regulation specifies the date of the request is deemed "made" should be "determined by the postmark of the request," rather than the date the Office received the request.⁷ Accordingly, the Board will remand this case in order for the proper determination of date of filing to be made.⁸

On remand, the Office should determine, if possible, the date appellant's request for a hearing under section 8124 was postmarked. If the date of postmark cannot be determined, the Office should presume the request was timely and grant the request, as it was the Office's

¹ 5 U.S.C. § 8124(b)(1).

² *Delmont T. 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).

³ 20 C.F.R. § 10.616(a); *see also Marilyn Wilson*, 51 ECAB ____ (Docket No. 98-401, issued December 15, 1999).

⁴ 20 C.F.R. § 10.616(a).

⁵ *Lawrence C. Parr*, 48 ECAB 445, 451 (1997).

⁶ The Board notes that this case record contains evidence which was submitted subsequent to the Office's December 29, 1999 decision with regard to the date the request was postmarked. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952). Appellant may submit this evidence to the Office on remand.

⁷ 20 C.F.R. § 10.616(a).

⁸ In light of the Board's decision on the issue of timeliness of appellant's request for a hearing, the Board will not consider on this appeal the issue of whether appellant was entitled to an award under the schedule.

responsibility to keep the envelope or otherwise keep evidence of the date of delivery in the case record.⁹

The decisions of the Office of Workers' Compensation Programs dated December 29 and October 4, 1999 are hereby set aside and this case is remanded for further proceedings in accordance with this decision of the Board.

Dated, Washington, DC
April 4, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁹ *Gus N. Rodes*, 43 ECAB 268 (1991).