

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSE V. LUGO and U.S. POSTAL SERVICE,  
POST OFFICE, Ponce, PR

*Docket No. 00-2027; Submitted on the Record;  
Issued April 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.<sup>1</sup>

On March 19, 1994 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that he injured his back while in the performance of duty. By letter dated July 17, 1995, the Office accepted appellant's claim for herniated disc and paid benefits from February 18 to October 25, 1995. The Office subsequently extended appellant's compensation to December 7, 1996. The Office stated that, if appellant believed he was disabled beyond that date, he would need to submit additional medical evidence supporting a request for additional compensation.

By letter dated January 22, 1997, the Office advised appellant that it had been informed that he was unwilling to participate in a vocational rehabilitation program because he alleged that he was totally disabled from work. The Office required appellant to submit medical evidence in support of his medical condition within 30 days from the date of the letter.

On February 25, 1997 the Office notified appellant that his compensation was reduced to zero effective March 2, 1997 based on his unwillingness to participate in the Office's vocational rehabilitation program. The Office mailed the letter to appellant's address as it appeared on his claim form: Urb Jardines Del Caribe Calle, 53-22-10, Ponce, Puerto Rico, 00731. A copy of appellant's appeal rights was attached.

By letter received by the Office on January 27, 1998, appellant inquired about the status of his claim.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

By letter dated June 18, 1998, the Office advised appellant that it had notified him in a decision dated February 25, 1997 that his compensation had been reduced to zero because of his unwillingness to participate in the Office's vocational rehabilitation program.<sup>2</sup>

By letter dated December 15, 1999, appellant, through counsel, requested an oral hearing. Appellant alleged that he received the Office's February 25, 1997 decision reducing his compensation to zero on November 17, 1999.

By decision dated February 22, 2000, the Office denied appellant's request for an oral hearing on the grounds that it was not timely submitted within 30 days of the Office's February 25, 1997 decision and that the issue in the case could be equally well addressed by a request for reconsideration and the submission of additional evidence.

The Board finds that the Office acted within its discretion in denying appellant's request for a hearing.

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>3</sup>

The Office, 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. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. 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.<sup>4</sup>

In this case, the Office issued a February 25, 1997 decision reducing appellant's compensation to zero based on his unwillingness to participate in the Office's rehabilitation program. Appellant did not request a hearing until he submitted a letter dated December 15, 1999, more than 30 days after the issuance of the Office's February 25, 1997 decision.

Appellant argued on appeal that he did not receive the February 25, 1997 decision until November 17, 1999, and thus his request for an oral hearing was made within 30 days of the date of receipt. However, the February 25, 1997 decision was mailed to appellant's address of record, as recorded in his initial claim form, namely, Urb Jardines Del Caribe Calle, 53-22-10, Ponce,

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<sup>2</sup> The Office inadvertently referred to its February 25, 1997 letter as February 25, 1998.

<sup>3</sup> 5 U.S.C. § 8124(b).

<sup>4</sup> *Henry Moreno*, 39 ECAB 475 (1988).

Puerto Rico, 00731. Thus, appellant is presumed to have received the February 25, 1997 letter prior to the November 17, 1999 date. The Office's subsequent letter dated June 18, 1998 was also sent to the address of record.

Since appellant's December 15, 1999 hearing request was made more than 30 days after the date of issuance of the Office's February 25, 1997 decision, appellant was not entitled to a hearing as a matter of right. The Office also exercised its discretion and further considered his request for review, but concluded that appellant could pursue his claim by requesting reconsideration and submitting medical evidence. The Office exercised its discretionary powers in denying appellant's request for a hearing, and in so doing, did not act improperly.<sup>5</sup>

The decision of the Office of Workers' Compensation Programs dated February 22, 2000 is hereby affirmed.

Dated, Washington, DC  
April 18, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>5</sup> *Corlisa L. Sims (Smith)*, 46 ECAB 172 (1994).