

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIE L. ROBINSON and DEPARTMENT OF VETERANS AFFAIRS,  
AIRPORT MAIL CENTER, Dallas, TX

*Docket No. 02-582; Submitted on the Record;  
Issued July 29, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's request for a hearing.

On September 3, 1999 appellant, then a 60-year-old mailhandler, filed a claim for a traumatic injury alleging that on May 4, 1999 he was stacking mail when a letter tray struck him in the forehead and he felt a knot in his forehead and has since had headaches and pain and stiffness in his neck.

By decision dated April 28, 2000, the Office denied appellant's claim, stating that the medical evidence was not sufficient to establish that his condition was caused by the injury.

Appellant appealed to the Board and the appeal was docketed as Docket No. 00-2397.

By order dismissing appeal dated April 17, 2001, the Board dismissed appellant's appeal, stating that he did not submit an Application for Review (AB-1) form which the Clerk of the Board sent to him on July 31, 2000 with instructions to complete and return within 30 days.

By letter to the Board dated May 9, 2001, appellant stated that he did not receive a July 31, 2000 letter from the Clerk of the Board requesting additional information and requested that the Board's order dismissing appeal be rescinded.

By letter dated September 21, 2001, appellant requested an oral hearing before an Office hearing representative.

By decision dated November 1, 2001, the Office's Branch of Hearings and Review denied appellant's request for a hearing, stating that appellant's letter requesting a hearing was

postmarked September 25, 2001, more than 30 days after the Office issued the April 28, 2000 decision and that, therefore, appellant's request was untimely. The Branch of Hearings and Review informed appellant that he could request reconsideration by the Office and submit additional evidence.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant ... 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>1</sup> Section 10.615 of the Office's federal regulations implementing this section of the Act, provides that a claimant can choose between an oral hearing or a review of the written record.<sup>2</sup> The regulation also provides that in addition to the evidence of record, the employee may submit new evidence to the hearing representative.<sup>3</sup>

Section 10.616(a) of the Office's regulations<sup>4</sup> provides in pertinent part:

"[A] claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."

The Board has held that 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 that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>5</sup> 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,<sup>6</sup> when the request is made after the 30-day period for requesting a hearing,<sup>7</sup> and when the request is for a second hearing on the same issue.<sup>8</sup>

In this case, appellant's hearing request, which was dated September 21, 2001,<sup>9</sup> was made more than 30 days after the date of issuance of the Office's April 28, 2000 decision and

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<sup>1</sup> 5 U.S.C. § 8124(b)(1).

<sup>2</sup> 20 C.F.R. § 10.615.

<sup>3</sup> *Id.*

<sup>4</sup> 20 C.F.R. § 616(a).

<sup>5</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>6</sup> *Rudolph Bremen*, 26 ECAB 354, 360 (1975).

<sup>7</sup> *Herbert C. Holly*, 33 ECAB 140, 142 (1981).

<sup>8</sup> *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>9</sup> Evidence of the postmark date is not in the record so it is appropriate to use the date of the letter requesting the hearing.

therefore, the Branch of Hearings and Review was correct in stating in its decision that appellant was not entitled to a hearing. The Branch of Hearings and Review exercised its discretionary powers in denying appellant's request for a hearing and in so doing, did not act improperly.

The November 1, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 29, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member