

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES R. JORDAN and U.S. POSTAL SERVICE,
POST OFFICE, Vista, CA

*Docket No. 03-121; Submitted on the Record;
Issued February 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing regarding his emotional condition claim.

This case has previously been before the Board on appeal.¹ In a June 22, 2000 decision, the Board affirmed prior decisions of the Office dated November 10 and December 18, 1997 pertaining to a shoulder claim and also a February 11, 1998 Office decision pertaining to the above-mentioned emotional condition claim. The Board found that the Office properly determined in decisions dated November 10 and December 18, 1997 that appellant's claim for compensation of a shoulder condition was barred by the three-year time limitation provisions of section 8122 of the Federal Employees' Compensation Act.² The Board also found that the Office on February 11, 1998 properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a) on the basis that his request did not meet the requirements set forth under section 8128.

The background of the case is outlined herein. On October 10, 1995 appellant, then a 48-year-old former letter carrier filed an occupational disease claim alleging that he developed mental stress attributed to actions of his supervisor and other representatives of management.³ Appellant was removed from his position with the employing establishment effective July 1,

¹ Docket No. 99-211.

² 5 U.S.C. § 8122.

³ The Board notes that appellant filed two prior claims with the Office in November and December 1991. The first claim was accepted for left medial and lateral epicondylitis and left shoulder impingement syndrome. The second claim, doubled into the above, was accepted for right carpal tunnel syndrome and rotator cuff tear. Appellant has received medical care for his accepted condition and was compensated for intermittent disability. Appellant also received a schedule award for 22 percent permanent impairment to the right arm as a result of his work-related injury.

1995 for misrepresentations that he made regarding his employment and leave. Appellant was approved disability retirement on July 23, 1996.

By decision dated December 7, 1995, the Office denied the October 10, 1995 claim because appellant failed to establish that he sustained an emotional condition in the performance of duty. Appellant requested an oral hearing in a letter dated December 18, 1995.

A hearing was held on February 5, 1997. By decision dated April 7, 1997, an Office hearing representative affirmed the February 5, 1997 decision finding that appellant had not established a compensable factor of employment.

In a letter received January 30, 1998, appellant requested reconsideration of the April 7, 1997 decision and submitted evidence. By decision dated February 11, 1998, the Office denied appellant's request for review of the merits on the grounds that the evidence was found to be immaterial and cumulative in nature and insufficient to warrant modification of the prior decision. Appellant thereafter filed his first appeal to the Board, and the Board decision discussed above was issued on June 22, 2000.

By letter dated August 1, 2002, appellant requested an oral hearing regarding his emotional condition claim. Appellant indicated that he requested an oral hearing because he continued to be treated for major depression and mental stress, which he attributed to the actions of the employing establishment.

By decision dated September 16, 2002, the Office denied appellant's request for an oral hearing. The Office determined that appellant had previously requested reconsideration to the Office, which was denied on February 11, 1998 and, therefore, he was not entitled to a hearing as a matter of right. The Office exercised its discretionary authority and denied a hearing on the grounds that the issues could be addressed by the submission of new evidence pursuant to a reconsideration request.

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

Section 8124(b)(1) of the Act provides in pertinent part:

"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 title 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 limitation 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 Appellant's request for a hearing was dated August 1, 2002. As this is more than 30 days after the February 11, 1998 Office decision, it is untimely.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ See *William F. Osborne*, 46 ECAB 198 (1994).

The Board has held that the Office, in its broad discretionary authority to administer the Act, has power to hold hearings in circumstances where no legal provision is made for such hearings and the Office must exercise its discretion in such circumstances.⁶

In this case, the Office advised appellant that he could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.⁷ The Board finds no abuse of the Office's discretionary authority in this case.

The decision of the Office of Workers' Compensation Programs dated September 16, 2002 is affirmed.

Dated, Washington, DC
February 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ *Mary B. Moss*, 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

⁷ *See Mary E. Hite*, 42 ECAB 641, 647 (1991).