

up the window in her postal vehicle. On October 4, 2006 Dr. Bernard Albina, an orthopedic surgeon, diagnosed possible torn rotator cuff.

By decision dated October 30, 2006, the Office denied appellant's claim on the grounds that her medical evidence did not provide any statements of causation or a reasoned medical opinion that her current condition was caused by the employment event.

In a letter dated November 20, 2006, appellant requested an oral hearing of the October 30, 2006 decision, which she stated was postmarked November 1, 2006. The hearing request was sent in an express mail envelope with metered postage dated November 20, 2006 and a postmark dated December 1, 2006.

By decision dated February 23, 2007, the Office denied appellant's request for a hearing on the grounds that it was not timely filed. It noted that the decision being appealed was dated October 20, 2006¹ and that the appeal was not postmarked until December 1, 2006, which was more than 30 days later. The Office stated that appellant could submit additional medical information and request reconsideration of the October 30, 2006 decision.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act,² concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "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 section 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."

The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.³ The regulations provide that a hearing is "a review of an adverse decision by a hearing representative" and that a claimant could choose between two formats: an oral hearing or a review of the written record.⁴ These regulations also provide that the request for either type of hearing "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."⁵

¹ This is a typographical error, as the date on the decision is October 30, 2006.

² 5 U.S.C. § 8124(b)(1).

³ *Leona B. Jacobs*, 55 ECAB 753 (2004); *Ella M. Garner*, 36 ECAB 238 (1984).

⁴ 20 C.F.R. § 10.615.

⁵ 20 C.F.R. § 10.616.

ANALYSIS

The Office's merit decision was dated October 30, 2006.⁶ A claimant is not entitled to an oral hearing as a matter of right unless it is postmarked within 30 days of the issuance of the decision. The Office regulations state that the 30-day time limitation is based on the decision's issuance, not its receipt by a claimant.⁷ In this case, the thirtieth day following the issuance of the decision was November 29, 2006. As indicated by appellant's argument on appeal and the postmark on the envelope, the request for oral hearing was mailed on December 1, 2006. Since this is more than 30 days after the issuance of the October 30, 2006 Office decision, the Board finds that appellant is not entitled to an oral hearing as a matter of right.

Although appellant's request for an oral hearing was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.⁸ In this case, the Office advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office's discretionary authority.⁹ There is no evidence of an abuse of discretion in this case.

CONCLUSION

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

⁶ Appellant alleged that the October 30, 2006 decision was postmarked on November 8, 2006, but did not provide any corroborating evidence of this.

⁷ 20 C.F.R. § 10.616(a).

⁸ 20 C.F.R. § 10.607(a).

⁹ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2007 is affirmed.

Issued: October 5, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board