

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ZORAIDA M. BETANCOURT-COLON and DEPARTMENT OF THE
TREASURY, U.S. CUSTOMS SERVICE, San Juan, P.R.

*Docket No. 97-130; Submitted on the Record;
Issued December 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

In the present case, appellant filed claims for injury to the left knee on March 11, 1987, March 28, 1991, and February 27, 1992. The Office accepted that appellant sustained left knee sprain and internal derangement.

On May 4, 1995 appellant filed a claim for an emotional condition causally related to her employment injury. By decision dated July 14, 1995, the Office denied the claim. In a decision dated August 7, 1996, the Office's Branch of Hearings and Review denied appellant's request for a hearing. The Office found that the request for a hearing was untimely and the issue could be addressed by requesting reconsideration and submitting new and relevant evidence.

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

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on September 11, 1996 the only decision over which the Board has jurisdiction on this appeal is the August 7, 1996 decision denying her request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation 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

¹ 20 C.F.R. § 501.3(d).

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.”²

A claimant requesting a hearing after the 30-day period is not entitled to a hearing as a matter of right.³ In this case, the record contains a letter dated November 13, 1995 from a Louis A. de Mier, requesting a hearing on appellant’s behalf. The Board notes that the letter was not properly addressed to the Branch of Hearings and Review; it was addressed to the regional Office and contained an incorrect room number. It does not appear that the regional Office received the letter until June 18, 1996, when appellant’s congressional representative submitted a copy. Upon receipt of a form authorizing representation by Mr. de Mier on July 11, 1996, the hearing request was forwarded to the Branch.

As noted above, a hearing request must be filed within 30 days of the final decision to be timely. In this case, the November 13, 1995 letter was clearly not filed within 30 days of the July 14, 1995 Office decision, and therefore is considered untimely.

Although appellant’s request for a hearing was untimely, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.⁴ In the August 7, 1996 decision, the Office advised appellant that the request for a hearing was further denied because the issue in the case could be addressed by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office’s discretionary authority.⁵ There is no evidence of an abuse of discretion in this case.

² 5 U.S.C. § 8124(b)(1).

³ See *Robert Lombardo*, 40 ECAB 1038 (1989).

⁴ See *Herbert C. Holley*, 33 ECAB 140 (1981).

⁵ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

The decision of the Office of Workers' Compensation Programs dated August 7, 1996 is affirmed.

Dated, Washington, D.C.
December 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member