

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EUGENE B. FERNANDEZ and U.S. POSTAL SERVICE,  
POST OFFICE, Albuquerque, N.M.

*Docket No. 97-316; Submitted on the Record;  
Issued December 2, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing under section 8124.

On September 30, 1995 appellant, then a 54-year-old mail carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on May 9, 1994 he first realized that his injury/disease was caused or aggravated by the repetitive motions of casing mail and particularly his June 1, 1989 employment injury.<sup>1</sup>

By letter dated November 27, 1995, the Office advised appellant that he needed to submit a detailed comprehensive medical report from his attending physician which included a rationalized opinion relating as to whether appellant's claimed condition was caused by his employment. The Office also advised appellant that the nature of his illness was not provided and the description of the relationship to his employment was inadequate.

In a letter dated December 21, 1995, the employing establishment acknowledged that appellant injured his right shoulder on June 1, 1994 in an employment accident.

By decision dated January 18, 1996, the Office denied appellant's claim for compensation benefits on the grounds that fact of injury had not been established.

By letter dated February 16, 1996, and mailed February 19, 1996,<sup>2</sup> appellant, through his representative, requested an oral hearing before an Office representative.

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<sup>1</sup> Appellant did not identify the nature of his disease or illness on his form. Appellant also submitted copies of his prior notices for injuries sustained while working for the employing establishment from 1967 through 1978.

<sup>2</sup> The letter was received by the Office on February 22, 1996.

By decision dated July 15, 1996, the Office denied appellant's request for a hearing on the grounds that it was untimely as it was postmarked February 19, 1996.

The Board finds that the Office improperly denied appellant's request for a hearing before an Office hearing representative.

Section 8124(b) of the Federal Employees' Compensation Act requires that a claimant requesting a hearing before an Office hearing representative must make such a request with 30 days after the date of issuance of the decision he wishes to have reviewed.<sup>3</sup> In this case, the 30-day period for determining the timeliness of appellant's hearing request would commence on January 19, 1996, the date following the issuance of the Office's January 18, 1996 decision denying his claim. However, 30 days from January 19, 1996 would be February 18, 1996 which fell on a Sunday. The first regular business day following February 18, 1996 was Monday, February 19, 1996, the date on which appellant's request for a hearing was postmarked. Appellant's request was therefore within the 30-day period required by section 8124(b) and he therefore is entitled to a hearing before an Office hearing representative.<sup>4</sup> The case will therefore be returned to the Office for a hearing as requested by appellant.<sup>5</sup>

The decision of the Office of Workers' Compensation Programs dated January 18, 1996 is hereby reversed.

Dated, Washington, D.C.  
December 2, 1998

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> 5 U.S.C. § 8124(b).

<sup>4</sup> *Maxwell L. Harvey*, 46 ECAB 993 (1995); *Donna A. Christley*, 41 ECAB 90 (1989).

<sup>5</sup> In light of the Board's decision on the issuance of the timeliness of appellant's request for a hearing, the Board will not consider on this appeal the issue of whether the Office properly denied appellant's claim for an occupational disease injury by decision dated January 18, 1996.