

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHYLLIS D. MENDEZ and U.S POSTAL SERVICE,  
GENERAL MAIL FACILITY, Dallas, Tex.

*Docket No. 96-1486; Submitted on the Record;  
Issued June 2, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

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

On September 25, 1990 appellant, then a 30-year-old letter sorting machine clerk, sustained a lumbar strain and temporary abdominal cramps in the performance of duty while lifting and moving equipment.

In a claim form dated November 4, 1991, appellant alleged that she sustained a recurrence of disability on November 2, 1991 which she attributed to her September 25, 1990 employment injury.

By decision dated June 17, 1992, the Office denied appellant's claim for a recurrence of disability in 1990.

By decision dated May 5, 1993, the Office denied appellant's request for authorization of a change in physician.

By letter dated June 11, 1993, appellant requested reconsideration of the June 17, 1992 decision and submitted additional evidence.

By decision dated September 8, 1993, the Office denied modification of its June 17, 1992 decision.

By letter dated November 14, 1995, submitted through her representative, appellant requested a hearing regarding the denial of her request for a change in physicians.

By decision dated February 7, 1996, the Office's Branch of Hearings and Review denied appellant's request for a hearing on the grounds that the request had not been timely made within 30 days of the Office's May 5, 1993 decision and therefore appellant was not entitled to a hearing as a matter of right. The Office stated that the issue involved in the case, whether the

Office abused its discretion in denying her request to change physicians, could be equally well addressed by a request for reconsideration and the submission of additional evidence.<sup>1</sup>

The Board finds that the Office properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.<sup>2</sup> 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.<sup>3</sup> As appellant's request for a hearing was dated November 14, 1995, more than 30 days after the Office's May 5, 1993 decision, appellant was not entitled to a hearing as a matter of right. The Office determined that the issue in the case could be equally well resolved through a reconsideration request and the submission of additional evidence. Therefore, the Office properly denied appellant's untimely request for a hearing.

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

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>1</sup> The Board notes that this case record contains documents belonging to a claimant other than appellant. Upon return of the case record, the Office should place these documents in the correct case record.

<sup>2</sup> See 5 U.S.C. § 8124(a).

<sup>3</sup> See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990). See also 20 C.F.R. § 10.131.