

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS C. HINES and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, Minn.

*Docket No. 96-2192; Submitted on the Record;
Issued November 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing before an Office hearing representative; and if so, (2) whether appellant has more than a 15 percent permanent impairment of the larynx or more than a 5 percent permanent impairment of the tongue, for which he received a schedule award.

On February 23, 1996 the Office issued a schedule award for a 15 percent permanent impairment of the larynx and a 5 percent permanent impairment of the tongue. In a letter dated March 21, 1996, and properly addressed to the Branch of Hearings and Review, appellant requested an oral hearing before an Office hearing representative to present oral and written evidence in further support of his claim. The Branch did not retain the envelope.¹ According to the date stamp on the letter itself, the Branch received appellant's original, signed request on March 25, 1996, a Monday and the 31st day following the Office's schedule award decision.

In a decision dated April 30, 1996, the Office found that appellant's request for an oral hearing was postmarked on March 25, 1996 and was therefore not timely filed. The Office exercised discretion to deny the request as the issue could equally well be addressed by requesting reconsideration and submitting appropriate evidence.

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

¹ Office procedures state that where the request for a hearing is sent to the Branch of Hearings and Review, "the envelope will be retained and attached to the request." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.3(b) (October 1992).

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

“Before review under section 8128(a) of this title [pertaining to requests for reconsideration], 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.”²

Regulations implementing the Act provide that a claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.³

When the last day to perform an act falls on a nonbusiness day the time is extended to the next regular business day.⁴ The Board has applied this rule to determine questions of timeliness arising under the Act.⁵

In the present case, the 30th day following the Office's February 23, 1996 schedule award decision was Sunday, March 24, 1996.⁶ The time for making a request for a hearing was therefore extended to the next regular business day or Monday, March 25, 1996. As the record shows that the Office received appellant's request on Monday, March 25, 1996, the Board finds that appellant's request was timely under section 8124(b)(1) of the Act and its implementing regulations. He is therefore entitled to an oral hearing before an Office hearing representative as a matter of right. The Board will reverse the Office's April 30, 1996 decision and remand the case for scheduling of the hearing requested.⁷

As a result of the Board's decision on the issue of the timeliness of appellant's request for an oral hearing, the issue of appellant's entitlement under the schedule award provisions of the Act is not in posture for a determination on this appeal. Provided that appellant does not abandon his request for a hearing, the Office will issue a merit decision on appellant's entitlement following the hearing with applicable review rights to preserve any appeal he may wish to take on this issue.

The April 30, 1996 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action consistent with this opinion.

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.131(a).

⁴ *Robert E. Kennedy*, 20 ECAB 349, 350 (1969) (quoting *Wirtz v. Local Union 169*, 246 F. Supp. 741 (D.C. Nev. 1965)).

⁵ *John B. Montoya*, 43 ECAB 1148 (1992) (in computing a time period the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday).

⁶ 1996 was a leap year.

⁷ *Maxwell L. Harvey*, 46 ECAB 993 (1995).

Dated, Washington, D.C.
November 3, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member