

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILLIP E. SMITH and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Des Moines, Iowa

*Docket No. 97-1269; Submitted on the Record;
Issued November 23, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed a bone spur due to factors of his federal employment; and (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing on the grounds that his request was not timely.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet his burden of proof in establishing that he developed a bone spur due to factors of his federal employment.

Appellant filed a claim on July 16, 1996 alleging that he had developed a bone spur and arthritis in his toe. By letter dated September 9, 1996, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant. Appellant did not respond and by decision dated November 5, 1996, the Office denied appellant's claim for failure to establish fact of injury. Appellant requested an oral hearing by letter postmarked and dated December 9, 1996. By decision dated January 8, 1997, the Branch of Hearings and Review denied his request as untimely and determined that he could pursue his claim through the reconsideration process.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In this case, appellant has submitted no medical evidence in support of his claim for an occupational disease. As the record is devoid of medical evidence, appellant has failed to meet his burden of proof and the Office properly denied his claim.

The Board further finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act,² concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."³

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.⁴ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.⁵

In the instant case, the Office properly determined appellant's December 9, 1996 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's November 5, 1996 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(b)(1).

⁴ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁵ *Id.*

The decisions of the Office of Workers' Compensation Programs dated January 8, 1997 and November 5, 1996 are hereby affirmed.

Dated, Washington, D.C.
November 23, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member