

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SYLVIA V. MORALES and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

*Docket No. 97-616; Submitted on the Record;
Issued October 20, 1998*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of her injury within 30 days of its occurrence as specified by the Federal Employees' Compensation Act;¹ and (2) whether the Office properly denied appellant's request for a hearing pursuant to section 8124(b) of the Act.

On April 30, 1993 appellant, a mail processor, filed a notice of traumatic injury and claim for compensation alleging that she developed a stress condition due to her supervisor's "discriminatory practices" after an injury on October 22, 1992 that had some relationship to an appendectomy previously performed.

By decision dated June 11, 1996,² the Office determined that appellant was not entitled to continuation of pay during her absence from work due to aggravation of her nonindustrial abdominal condition on October 22, 1992 because her April 30, 1993 claim was made more than 30 days after the date of injury.³

By letter dated July 17, 1996, appellant requested an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

² The Office's decision of June 11, 1996 supersedes the Office's April 5, 1995 letter, which advised the employing establishment that appellant was entitled to continuation of pay due to her abdominal injury from October 23 through December 31, 1992.

³ The Office accepted appellant's claim for aggravation of an abdominal incision for the period October 22 through December 31, 1992 on December 15, 1994.

By decision dated August 1, 1996, the Office denied appellant's request for a hearing finding that her request was not timely filed and that the issue could be equally addressed by requesting reconsideration.

The Board finds that the Office properly denied continuation of pay on the grounds that appellant failed to give written notice of her injury within 30 days.

Section 8118 of the Act⁴ authorizes the continuation of pay of an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this Title."⁵ The context of section 8122 makes clear that this means within 30 days of the date of the injury.⁶ Section 10.201(a) of the implementing federal regulations⁷ provides in pertinent part: "An employee is not entitled to continuation of pay unless: *** (3) The employee files a claim for a period of wage loss, as required by 5 U.S.C. § 8118(a), within 30 days of the injury on a form approved by the Secretary. (Form CA-1 may be used for this purpose)." Therefore, to be entitled to continuation of pay, an employee must file a claim on an appropriate form within 30 days after the injury.⁸

The Board finds that appellant failed to give written notice of her injury within 30 days of its occurrence and that, therefore, the Office properly denied continuation of pay. Appellant first gave the Office written notice of her October 22, 1992 employment injury on April 30, 1993 when she filed her notice of traumatic injury and claim for compensation (Form CA-1) for the aggravation of her abdominal condition. As appellant did not file her claim for continuation of pay until April 30, 1993, which is more than 30 days after October 22, 1992, such claim is untimely.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states:

"Before review under section 8128(a) of this title, a claimant for compensation 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."⁹

⁴ 5 U.S.C. § 8118.

⁵ 5 U.S.C. § 8122(a)(2).

⁶ *Myra Lenburg*, 36 ECAB 487 (1985); *George A. Harrell*, 29 ECAB 338 (1978); see 20 C.F.R. § 10.201(a)(3).

⁷ 20 C.F.R. § 10.201(a).

⁸ *Bobby W. Anderson*, 41 ECAB 833 (1990).

⁹ 5 U.S.C. § 8124(b)(1).

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.¹⁰

The Office, in its August 1, 1996 decision, properly determined that appellant was not entitled to a hearing as a matter of right since appellant's request was not made within 30 days after the issuance of a final decision. The Office rendered its decision on June 11, 1996 and appellant's request for an oral hearing was postmarked July 17, 1996, more than 30 days after the Office rendered its decision. The Office also exercised its discretion and further considered the hearing request but concluded that appellant could equally well pursue her claim by requesting reconsideration along with the submission of factual and medical evidence. For these reasons, the Office acted properly in denying appellant's July 17, 1996 request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated August 1 and June 11, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

¹⁰ *Sandra F. Powell*, 45 ECAB 877 (1994).