

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LONNIE B. ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 98-1440; Submitted on the Record;
Issued December 8, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On the prior appeal of this case,¹ the Board found that the Office was precluded from invoking the affirmative defense of willful misconduct because it did not raise the affirmative defense in its original adjudication of the claim. The Board set aside Office decisions denying appellant's claim and remanded the case for an appropriate final decision on whether appellant sustained an injury in the performance of duty, as alleged.

In a decision dated March 30, 1994, the Office denied appellant's claim on the grounds that he had removed himself from the performance of duty with his refusal to follow his supervisor's order; therefore, the injury he sustained during the ensuing altercation with his supervisor was not compensable.

On July 5, 1996 the Board reviewed the Office's decision and found that the injury for which appellant claimed compensation arose in the course of employment.² The Board set aside the Office's March 30, 1994 decision and remanded the case for further development and an appropriate final decision on whether the incident occurred as alleged and, if so, whether the incident caused an injury.

In a decision dated December 11, 1996, the Office found that the evidence of record failed to establish that appellant sustained an injury as alleged. The Office found that appellant's version of what occurred was not consistent with all the surrounding facts. The Office found appellant's assertion that his supervisor shoved him into a letter case at work on September 22,

¹ Docket No. 93-445 (issued January 14, 1994).

² Docket No. 94-1842 (issued July 5, 1996).

1981 was not credible. In an attached statement of review rights, the Office notified appellant that any request for a hearing must be made within 30 days after the date of the decision.

In a letter postmarked December 11, 1997, appellant “appealed” to the Branch of Hearings and Review.

In a decision dated January 26, 1998, the Office found that appellant’s request was untimely. The Office nonetheless considered the matter and denied a hearing on the grounds that appellant could equally well address the issue in the case by requesting reconsideration and submitting evidence not previously considered establishing that his September 22, 1981 lower back injury was caused by factors of his federal employment.

Appellant filed an appeal with the Board on April 1, 1998.

An appeal to the Board must be mailed no later than one year from the date of the Office’s final decision.³ Because appellant mailed his April 1, 1998 appeal more than one year after the Office’s December 11, 1996 decision, the Board presently has no jurisdiction to review that decision or the merits of appellant’s claim for compensation. The only decision that the Board may review is the Office’s January 26, 1998 decision denying appellant’s December 11, 1997 request for a hearing before an Office hearing representative.

The Board finds that the Office properly denied appellant’s request.

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

“Before review under section 8128(a) of this title, 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.”⁴

A claimant is not entitled to a 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.⁵ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁷

Because appellant made his December 11, 1997 request more than 30 days after the Office’s December 11, 1996 decision, he is not entitled to a hearing as a matter of right. The

³ 20 C.F.R. § 501.3(d) (time for filing); *see id.* section 501.10(d)(2) (computation of time).

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.131(a)-(b).

⁶ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ *Rudolph Bermann*, 26 ECAB 354 (1975).

Office exercised its discretion in the matter and correctly advised appellant that he could equally well pursue the issue in his case through the reconsideration process.⁸

The January 26, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 8, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁸ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).