

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM ALLEN and U.S. POSTAL SERVICE,  
POST OFFICE, Katy, TX

*Docket No. 98-1520; Submitted on the Record;  
Issued December 8, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

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

In the present case, appellant filed a claim alleging that he injured his right shoulder in the performance of duty on August 16, 1996. By decision dated November 7, 1996, the Office denied appellant's claim.

By decisions dated April 1 and November 18, 1997, the Office's Branch of Hearing and Review determined that appellant had filed a request for a hearing on January 29, 1997. The Office found that the request was untimely and therefore appellant was not entitled to a hearing as a matter of right. The Office further advised appellant that it had exercised its discretionary authority and denied appellant's request for a hearing because the issue could be equally well addressed by a request for reconsideration.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.<sup>1</sup> Since appellant filed his appeal on March 27, 1998, the only decisions over which the Board has jurisdiction on this appeal are the April 1 and November 18, 1997 decisions denying his request for a hearing as untimely.

The Board has reviewed the record and finds that appellant is entitled to a hearing as a matter of right.

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<sup>1</sup> 20 C.F.R. § 501.3(d).

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

“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 title 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.”<sup>2</sup>

In the present case, the Office determined that appellant did not request a hearing until a letter postmarked on January 29, 1997. Appellant, however, indicated in an October 22, 1997 letter that he had submitted a request for a hearing by letter dated November 20, 1996, but inadvertently sent the letter to the wrong address. The record contains a copy of a November 20, 1996 letter requesting an oral hearing; it is addressed to the Office's district office in Dallas, Texas.<sup>3</sup> In addition, appellant submitted a copy a certified mail receipt indicating delivery of an item to the district office on November 25, 1996.

The evidence of record therefore does indicate that the district office received a request for an oral hearing on November 25, 1996, which is within the 30-day period provided by the November 7, 1996 Office decision. Although the request for an oral hearing was addressed to the district office rather than the Branch of Hearings and Review, the Office's procedure manual directly addresses this situation:

“3. Applications. This paragraph addresses requests for a hearings and review. While they should be directed to H&R [Hearings and Review], some may be received in the DO [District Office]. They should be handled as follows:

“a. District Office. Requests received in the DO should be handled as priority mail. The request for hearing or review should be date-stamped, but the DO need not retain the envelope used for mailing by the claimant. The [c]laims [e]xaminer should review the case to determine whether a final decision has been reached....

“(2) If so, the DO will forward the request for hearing or review, together with the case file, to H&R....

“4. Timeliness. If the claimant sent the request to the DO (instead of H&R) and the envelope was not retained, then the request was timely filed if it was date-stamped by the DO within 30 days of issuance of the decision.”<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> Appellant referred to an October 11, 1996 denial letter, which did not represent a final decision. However, prior to the November 20, 1996 letter, the Office had issued a November 7, 1996 final decision denying appellant's claim.

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.3-4 (October 1992).

Office procedures clearly indicate that the request for a hearing should have been forwarded to the Branch of Hearings and Review, but apparently the district office did not do so in this case. The Board finds that appellant did file a request for a hearing on November 25, 1996, the date the certified mail receipt indicates delivery to the Office. Since this is within the 30-day period, appellant is entitled to a hearing as a matter of right. The case will be remanded to the Office for scheduling of a hearing before an Office hearing representative.

The decisions of the Office of Workers' Compensation Programs dated November 18 and April 1, 1997 are set aside and the case remanded to the Office for action consistent with this decision of the Board.

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

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member