

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEARLETHA CARISTI and U.S. POSTAL SERVICE,
RYDER STATION, Brooklyn, NY

*Docket No. 98-1961; Submitted on the Record;
Issued December 1, 1999*

DECISION and ORDER

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

The issue is whether the Branch of Hearings and Review properly denied appellant's request for a hearing.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

Appellant, a letter carrier, filed a claim on October 25, 1995 alleging on that date she injured her head, back, neck, leg, thigh, ankle and arm in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain and head contusion. By decision dated February 20, 1997, the Office terminated appellant's compensation benefits effective March 29, 1997. Appellant requested a hearing by letter dated March 2, 1997. Appellant again requested a hearing by letter dated January 13, 1998. By decision dated March 5, 1998, the Branch of Hearings and Review denied appellant's request for a hearing as untimely.

Section 8124(b) of the Federal Employees' Compensation Act,¹ 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."²

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

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8124(b)(1).

the request is filed within the requisite 30 days.³ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.⁴

In the instant case, the Office improperly determined that appellant had not made a timely request for a hearing. The Office issued its decision on February 20, 1997. Appellant made her initial request for a hearing on March 2, 1997. As this request was within the 30-day time limitation, appellant is entitled to a hearing as a matter of right. Therefore, on remand the Office should schedule a hearing as requested by appellant and issue an appropriate decision.⁵

The March 5, 1998 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
December 1, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁴ *Id.*

⁵ In light of the Board's decision on the issue of the timeliness of appellant's request for a hearing, the Board will not consider on this appeal the issue of termination of appellant's compensation benefits.