

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GARY MOSS and DEPARTMENT OF THE NAVY, NAVAL SEA SYSTEMS  
COMMAND, PHILADELPHIA NAVAL SHIPYARD,  
Philadelphia, Pa.

*Docket No. 97-1253; Submitted on the Record;  
Issued February 12, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124.

The Board finds that the Office of Workers' Compensation Programs abused its discretion when it denied as untimely appellant's request for an oral hearing before an Office hearing representative, pursuant to 5 U.S.C. § 8124.

The Office issued its formal final decision on the merits of the case by decision dated January 26, 1996. By request dated and postmarked February 26, 1996, appellant requested an oral argument. By decision dated April 1, 1996, the Office denied appellant's oral argument request finding that it was untimely made, such that he was not, by right, entitled to a hearing. The Office further found that the issue could be equally well addressed by requesting reconsideration from the Office and by submitting new evidence not previously considered. The Board, however, finds that the request was timely made, such that appellant is entitled to a hearing by right.

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

“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 issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>1</sup>

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<sup>1</sup> 5 U.S.C. § 8124(b)(1)

The Office's procedures implementing this section of the Act are found in the Code of Federal regulations at 20 C.F.R. § 10.131(a). This paragraph, which concerns the preliminary review of a case by an Office hearing representative to determine whether the hearing request is timely and whether the case is in posture for a hearing states in pertinent part as follows:

“A claimant is not entitled to an oral 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, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. § 8128(a) and section 10.138(b) of this subpart prior to requesting a hearing, or if review of the written record as provided by paragraph (b) of the section has been obtained.”<sup>2</sup>

In the present case, the Office issued its decision reducing appellant's compensation on January 26, 1996. Therefore, the 30-day period for determining timeliness of appellant's hearing request would commence on January 27, 1996, the date following the issuance of the Office's January 26, 1996 decision. However, 30 days from January 27, 1996 would be February 25, 1996 which fell on a Sunday. The first regular business day following February 25, 1996 was Monday, February 26, 1996. Appellant requested a hearing in a letter dated and postmarked February 26, 1996. A hearing request must be made within 30 days of the issuance of the decision as determined by the postmark of the request.<sup>3</sup> However, when that 30<sup>th</sup> day falls on a Sunday, as February 25, 1996 did, the request will be considered timely if made by close of business on the following Monday, February 26, 1996.<sup>4</sup> Since appellant, therefore, timely requested a hearing within 30 days of the Office's January 26, 1996 decision, he was entitled to a hearing under section 8124 as a matter of right.

The Office, therefore, abused its discretion by denying appellant's request for a hearing to which he was, by right, entitled.

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<sup>2</sup> 20 C.F.R. § 10.131(a).

<sup>3</sup> 20 C.F.R. § 10.131(a).

<sup>4</sup> *Maxwell L. Harvey*, 46 ECAB 993 (1995); *Donna Christley*, 41 ECAB 90 (1989).

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 1, 1996 is hereby set aside and the case is remanded for an oral hearing as requested by appellant.

Dated, Washington, D.C.  
February 12, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member