

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY W. COOPER and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

*Docket No. 97-518; Submitted on the Record;
Issued March 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs' denial of appellant's request for a hearing constituted an abuse of discretion pursuant to section 8124(b) of the Federal Employees' Compensation Act; and (2) whether appellant has met his burden of proof in establishing that injuries to his right arm and back are causally related to factors of his federal employment.

On March 8, 1996 appellant, then a 52-year-old mailhandler, filed an occupational disease claim, alleging that beginning November 27, 1995 he became aware of pain and soreness in his spine, upper back and right arm that was causally related to his work on the back dock. In a supplemental statement, appellant indicated that he had to pull heavy containers from a truck onto the back dock and that he did this work repeatedly. He noted that beginning November 27, 1995, while moving the heavy containers, he noticed pain radiating down his right arm and into both hands, as well as pain in his left knee, and a loss of motion in his right arm. In a decision dated May 10, 1996, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate a causal connection between the claimed conditions and the identified work factors. By decision dated July 15, 1996, the Office denied appellant's request for a hearing on the grounds that it was untimely filed. In a merit decision dated August 22, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish modification of the prior decision.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for decision as the Office improperly denied appellant's request for a hearing as untimely filed.

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... 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."¹ As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a

¹ 5 U.S.C. § 8124(b)(1).

hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days as determined by postmark.²

In computing the time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.³ In this case, the Office issued a merit decision dated May 10, 1996 and time began to run from May 11, 1996. Therefore, the last day of the 30-day time period was June 9, 1996 which fell on a Sunday. Consequently, June 10, 1996 became the last day appellant could timely submit a request for hearing. As appellant submitted a request for a hearing which was postmarked June 10, 1996, his request is timely filed and he is entitled to a hearing as matter of right pursuant to section 8124 (b) of the Act. The July 15, 1996 decision of the Office must be reversed.⁴

The decisions of the Office of Workers' Compensation Programs dated August 22 and May 10, 1996 are hereby set aside and the decision of the Office dated July 15, 1996 is hereby reversed. The case is remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, D.C.
March 5, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

² *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984); *see also* 20 C.F.R. § 10.131(a).

³ *John B. Montoya*, 43 ECAB 1148 (1992).

⁴ As appellant filed a timely request for a hearing, the case must be remanded for that purpose. Thus, any issue relevant to the merits of appellant's claim in the Office's May 10, 1996 cannot be addressed as the merits are subject to further adjudication, and the August 22, 1996 decision is null and void since appellant filed a timely request for a hearing.