

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN HILL and DEPARTMENT OF DEFENSE, DEFENSE
CONSTRUCTION SUPPLY CENTER, Columbus, OH

*Docket No. 98-87; Submitted on the Record;
Issued November 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

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

The Board has duly reviewed the case on appeal and find that the Branch of Hearings and Review properly denied appellant's request for an oral hearing.

Appellant filed a claim on November 22, 1993 alleging that he sustained a back strain in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for acute lumbosacral strain/sprain on January 27, 1994. The Office also accepted that appellant sustained a recurrence of disability on June 15, 1994 and entered appellant on the periodic rolls on September 16, 1994. By letter dated September 20, 1995, the Office proposed to terminate appellant's compensation benefits. In a decision dated October 23, 1995, and mailed to appellant's correct address, the Office terminated appellant's compensation benefits. Appellant filed an additional claim for compensation on November 14, 1996. The Office accepted this claim for lumbar strain on April 14, 1997.

On June 23, 1997 appellant contacted the Office and alleged that he had not received a copy of the October 23, 1995 decision. The Office provided appellant and his representative with copies of this decision on June 23, 1997. By letter dated July 10, 1997, appellant, through his representative, requested an oral hearing of the "June 23, 1997" decision. By decision dated August 21, 1997, the Branch of Hearings and Review denied appellant's request for an oral hearing noting that the request was not timely filed for the October 23, 1995 decision and that appellant could submit additional evidence through the reconsideration process.¹

¹ As more than one year has elapsed from the most recent adverse merit decision, the October 23, 1995 decision, to the date of appeal to the Board, on October 8, 1997, the Board lacks jurisdiction to consider the merits of appellant's claim. 20 C.F.R. § 501.3(d)(2).

Section 8124(b) of the Federal Employees' Compensation Act,² 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."³

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 the request is filed within the requisite 30 days.⁴ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.⁵

In this case, appellant alleged that he had not received a copy of the October 23, 1995 decision. The Office has the burden of proving that it mailed to claimant the October 23, 1995 decision. It is presumed, in the absence of evidence to the contrary, that a decision mailed to an individual in the ordinary course of business was received by the individual. The presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.⁶ The Office properly mailed this decision to appellant's current address, 1116 Langland Drive, Columbus, Ohio, 43220. As there is no evidence to the contrary, the Board finds that the Office properly provided appellant with a copy of the October 23, 1995 decision.

In the instant case, the Office properly determined that appellant's July 10, 1997 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's October 23, 1995 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case could be resolved through the submission of evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(b)(1).

⁴ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁵ *Id.*

⁶ *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

The August 21, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
November 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member