

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY N. FOWLER and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, OH

*Docket No. 98-1486; Submitted on the Record;
Issued February 2, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly found appellant to be ineligible for a schedule award; and (2) whether the Office properly denied appellant's request for a hearing.

On April 30, 1990 appellant, then a 31-year-old letter carrier, filed a notice of occupational disease and claim for compensation alleging that he developed a compressed nerve in his wrist due to grasping mail in the performance of duty. The Office accepted the claim for temporary aggravation of ulnar nerve entrapment, left wrist. Appellant underwent surgery to decompress the ulnar nerve on October 10, 1991. He also filed a CA-7 claim for wage loss during the period of March 20, 1990 to April 24, 1992.

After further medical development, including an evaluation by an impartial medical specialist, the Office issued a decision on January 5, 1993. The Office determined that appellant was not disabled from work for the period of March 20, 1990 to April 24, 1992. The Office also determined based on the opinion of the impartial medical specialist that appellant was not entitled to be reimbursed for expenses related to his October 10, 1991 surgery.

Appellant requested a formal hearing which was held on June 2, 1993.

In a decision dated August 4, 1993, an Office hearing representative affirmed the Office's January 5, 1993 decision.

On June 30, 1997 appellant by counsel requested a schedule award.

In a letter decision dated December 29, 1997, the Office advised appellant that he was not eligible for a schedule award on the grounds that he failed to appeal the Office hearing representative's August 4, 1993 decision affirming the Office's January 5, 1993 decision.

In a letter dated January 2, 1998, appellant by counsel requested a hearing.

In a decision dated February 24, 1998, the Office denied appellant's hearing request, noting that appellant had already received an oral hearing on the issue of whether he was totally disabled due to the accepted arm condition, and therefore, his case was not entitled to further consideration by the Branch of Hearings and Review. The Office advised appellant of his right to file a request for reconsideration and submit new evidence.

The Board finds that the Office improperly found appellant not to be eligible for a schedule award.

The Office determined that appellant was not eligible for a schedule award because he failed to appeal the Office's August 4, 1993 decision on the issues of disability and medical reimbursement. Contrary to the Office's determination, even if appellant was not disabled for the period of March 20, 1990 to April 24, 1992 and did not receive authorization for surgery, those issues are separate and distinct from whether appellant is entitled to a schedule award. Because the Office has never addressed whether or not appellant has impairment related to his accepted work injury which would entitle him to a schedule award, the Board finds that the Office erred in denying appellant's schedule award claim on the grounds cited.

The Board also finds that the Office erred in denying appellant's request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing, states:

"Before review under section 8128(a) of this title, a claimant for compensation 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."¹

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.²

In the instant case, appellant's hearing request was timely filed within 30 days of the Office's December 29, 1997 decision. In denying appellant's recent hearing request, the Office incorrectly found that appellant had already been granted a hearing on the issue of impairment. Appellant's prior hearing was limited to the issues of disability and medical benefits. The Board

¹ 5 U.S.C. § 8124(b)(1).

² *Joseph K. Johnson*, 41 ECAB 328, 333 (1989); *Henry Moreno*, 39 ECAB 475, 482 (1988).

finds that appellant has not yet received a hearing on the issue of whether she has permanent impairment as a result of her accepted left wrist condition. For these reasons, the Board finds that the Office acted improperly in denying appellant's January 2, 1998 request for a hearing.³

Accordingly, this matter is remanded to the Office for issuance of an appealable decision on the merits of whether appellant is entitled to a schedule award. Although the Office previously considered the medical evidence with respect to the issue of disability, the Office has not addressed whether appellant is entitled to a schedule award based on the medical evidence in a decision which clearly outlines the Office's findings of fact and conclusions, and which provides appellant with a statement of his appeal rights.

The decisions of the Office of Workers' Compensation Program dated February 24, 1998 and December 29, 1997 are hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
February 2, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ Appellant submitted additional evidence after the February 24, 1998 decision; however, the Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).