

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JO ANN VAHEY and U.S. POSTAL SERVICE,
POST OFFICE, Landenberg, PA

*Docket No. 98-1393; Submitted on the Record;
Issued March 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

On January 4, 1995 appellant, then a 51-year-old rural mail carrier, filed an occupational disease claim alleging that she sustained an injury to her right hand which she attributed to her job duties.¹

By decision dated July 11, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained an injury to her right hand causally related to factors of her employment.

By letter dated August 31, 1995, appellant requested reconsideration of the denial of her claim.

By merit decision dated December 18, 1995, the Office denied modification of its July 11, 1995 decision.

By letter dated August 8, 1996, appellant filed an appeal with the Board.

By letter dated October 4, 1996, received by the Board on October 8, 1996, appellant requested that her appeal with the Board be withdrawn so that she could submit new evidence to the Office. The Board issued an order dismissing the appeal on November 18, 1996.

By letter dated June 9, 1997, appellant requested a hearing.

¹ The record shows that the Office had previously accepted carpal tunnel syndrome of the left hand as work related and authorized surgery on the left hand as well as an additional procedure on the right hand as adjunctive therapy.

By decision dated July 24, 1997, the Office denied appellant's request for a hearing.²

The Board finds that the Office's refusal to grant appellant a hearing did not constitute an abuse of discretion.

Section 8124(b)(1) of the Federal Employees' Compensation Act³ provides 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 a 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."

Under this provision of the Act a claimant is entitled to a timely requested hearing under section 8124(b) only before the Office has reviewed his claim under section 8128.⁴

In this case, prior to her June 9, 1997 request for a hearing, appellant had filed an August 31, 1995 request for reconsideration of the Office's July 11, 1995 decision and a decision was issued regarding her request for reconsideration on December 18, 1995. Therefore, she was not entitled to a hearing as a matter of right. The Office, however, 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. 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.⁵ In this case, the Office further considered appellant's request and properly determined that her request for a hearing could be equally well addressed by submitting a request for reconsideration and additional evidence sufficient to warrant modification of its prior decision.

² The Office noted in its decision that it had previously issued a December 18, 1996 decision denying a reconsideration request from appellant. However, the record shows that the year of that decision was 1995, not 1996.

³ 5 U.S.C. § 8124(b)(1).

⁴ *Mary G. Allen*, 40 ECAB 190, 194 (1988).

⁵ *Henry Moreno*, 39 ECAB 475, 482 (1988).

The decision of the Office of Workers' Compensation Programs dated July 24, 1997 is affirmed.

Dated, Washington, D.C.
March 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member