

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS D. KNIGHT, JR. and DEPARTMENT OF THE ARMY,
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 98-2289; Submitted on the Record;
Issued March 9, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after May 29, 1997 due to his July 5, 1983 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act as untimely.

Considering the second issue first, the Board finds that the Office improperly denied appellant's request for a hearing under section 8124 of the Act as untimely.

On July 5, 1983 appellant, then 35-year-old mechanic/repairman sustained an employment-related right shoulder strain. Appellant returned to regular duty after his injury and stopped working for the employing establishment at some point before December 1986.¹ On August 20, 1997 appellant claimed that he sustained a recurrence of disability on May 29, 1997 due to his July 5, 1983 employment injury. By decision dated November 3, 1997, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after May 29, 1997 due to his July 5, 1983 employment injury. By letter dated and postmarked December 3, 1997, appellant requested a hearing before an Office hearing representative in connection with the Office's November 3, 1997 decision and, by decision dated February 17, 1998, the Office denied appellant's hearing request as untimely. Appellant, through his attorney, requested reconsideration of his claim and, by decision dated June 9, 1998, the Office affirmed its November 3, 1997 decision.²

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this

¹ Appellant worked for several private employers beginning in December 1986.

² The reconsideration request was contained in a letter dated December 3, 1997, but the Office delayed consideration of the reconsideration request until after it had considered and denied appellant's hearing request.

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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”³ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁴

In the present case, appellant’s hearing request was timely in that it was made within 30 days after the date of issuance of the Office’s decision dated November 3, 1997. Appellant requested a hearing before an Office representative in a letter dated and postmarked December 3, 1997. According the relevant regulations, the determination regarding whether a hearing request is timely is governed by the date which it was postmarked.⁵ Hence, the Office was incorrect in stating in its February 17, 1998 decision that appellant’s December 3, 1997 hearing request was untimely. Given that appellant made a timely hearing request, the case will be remanded to the Office for a hearing before an Office hearing representative to be followed by an appropriate decision regarding whether appellant sustained a recurrence of disability on or after May 29, 1997 due to his July 5, 1983 employment injury.⁶

The February 17, 1998 decision of the Office of Workers’ Compensation Programs is set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
March 9, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ 5 U.S.C. § 8124(b)(1).

⁴ *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

⁵ *See* 20 C.F.R. § 10.131(a).

⁶ Given the Board’s disposition of the nonmerit issue of the present case, it is premature for it to consider the merit issue of the present case.