

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAYMOND RICHARDSON and U.S. POSTAL SERVICE,  
POST OFFICE, Shreveport, LA

*Docket No. 99-602; Oral Argument Held November 4, 1999;  
Issued May 11, 2000*

Appearances: *Bettye L. Richardson*, for appellant; *Catherine P. Carter, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

The Board finds that the Office properly denied appellant's request for a hearing.

In this case, appellant, then a 48-year-old mailhandler, filed a claim on February 19, 1997 alleging that his cerebral vascular accident, stroke and aphasia was caused and or aggravated by his employment. In an August 7, 1997 decision, the Office denied the claim finding that the medical evidence was not sufficient to establish that appellant's condition was caused by an employment factor.

In a letter postmarked August 7, 1998, appellant requested a hearing on his claim. In a decision dated September 22, 1998, the Office denied appellant's request for a hearing as untimely and found that the matter could be further pursued through the reconsideration process.

The Board only has jurisdiction over the September 22, 1998 decision, which denied appellant's request for a hearing. Because more than one year has elapsed between the issuance of the Office's decision finalized August 7, 1997 and December 21, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the decision finalized August 7, 1997.<sup>1</sup>

Section 8124(b)(1) of the Federal Employees' Compensation Act provides in pertinent part:

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c), 501.3(d).

“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 title 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.”<sup>2</sup>

A claimant requesting a hearing after the 30-day period is not entitled to a hearing as a matter of right.<sup>3</sup> In this case, the record contains a letter dated and postmarked August 7, 1998 from appellant’s wife, who is acting as appellant’s representative, requesting a hearing on appellant’s behalf. As noted above, a hearing request must be filed within 30 days of the final decision to be timely. In this case, the August 7, 1998 letter was clearly not filed within 30 days of the August 7, 1997 Office decision and, thus, appellant was not entitled to a hearing as a matter of right. Hence the Office was correct in stating in its September 22, 1998 letter decision that appellant was not entitled to a hearing as a matter of right because her August 7, 1998 hearing request was not made within 30 days of the August 7, 1997 decision. The Board notes that although appellant made reference to an August 21, 1997 hearing request within the August 7, 1998 hearing request the record is devoid of a copy of that request. Although such copy of the August 21, 1997 hearing request was provided with appellant’s appeal papers and marked “Exhibit A,” the Board considers this to be new evidence, over which it has no jurisdiction to review, as it was not before the Office at the time of its decision.<sup>4</sup>

Although appellant’s request for a hearing was untimely, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.<sup>5</sup> In the September 22, 1998 letter decision, the Office advised appellant that the request for a hearing was further denied because the issue in the case could be addressed by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office’s discretionary authority.<sup>6</sup> There is no evidence of an abuse of discretion in this case.

For these reasons, the Office properly denied appellant’s request for a hearing under section 8124 of the Act.

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> See *Robert Lombardo*, 40 ECAB 1038 (1989).

<sup>4</sup> See 20 C.F.R. §§ 501.2(c), 501.3(d).

<sup>5</sup> See *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>6</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989).

The decision of the Office of Workers' Compensation Programs dated September 22, 1998 is affirmed.<sup>7</sup>

Dated, Washington, D.C.  
May 11, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> The Board notes that during the oral argument in the above case, appellant had submitted a response brief to the Director's memorandum in justification of the Office's September 22, 1998 decision. An Order dated November 4, 1999 was issued granting the Director 30 days in which to submit a reply to appellant's brief. As the Director failed to submit a timely reply, appellant's representative filed a motion for a "default judgment." The Board has held that its *Rules of Procedure* do not require the Director to file a pleading or provide any sanctions for not filing a pleading; see *Thomas D. Mooney*, 44 ECAB 241 (1992). Accordingly, appellant's motion for a default judgment is denied.