

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CINDY L. TERRY and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 99-1879; Submitted on the Record;
Issued November 9, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

The Board has duly reviewed the case record in this appeal and finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

On October 12, 1994 appellant, then a 35-year-old letter carrier, filed a claim for occupational disease or illness alleging that her stressed and overworked muscles were caused by her federal employment.

On January 18, 1995 the Office accepted appellant's claim for bilateral shoulder and neck strain.

On December 31, 1997 appellant filed a claim for a schedule award and listed her address as 1212 Grace St., Weatherford, TX.

By decision dated May 15, 1998, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that her condition warranted a schedule award. The Office mailed the letter to PO Box 817, Weatherford, TX.¹

On August 20, 1998 appellant notified the district Office that she had received a copy of her decision after telephoning the Office and requesting a copy. She advised the Office that the address it used was an old address and that the correct address was included in her file record. Appellant then asked for an extension of time to comply with her review rights in light of her late receipt of the decision. On September 19, 1998 she again wrote the district Office asking for an extension of time to comply with her review rights and also asked for a copy of all records

¹ This address was appellant's address when she filed her initial claim on October 12, 1994.

contained in her file. In both letters appellant used her 1212 Grace St., Weatherford, TX address. On October 16, 1998 the Office denied appellant's request for an extension of time but sent the letter to appellant's incorrect address of PO Box 817, Weatherford, TX.

On November 12, 1998 and February 15 and 21, 1999 appellant requested review of the written record.

By decision dated April 13, 1999, the Office denied appellant's request for review of the written record as untimely under section 8124 of the Federal Employees' Compensation Act. The Office noted that appellant's decision was issued on May 15, 1998 and that her request for review of the written record was postmarked February 21, 1999.

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the 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."² 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.³

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 or deny 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.⁴

In this case, the record reveals that appellant acknowledged receiving a copy of her decision and appeal rights by August 20, 1998. However, she did not request a review of the written record until November 12, 1998. Since appellant's November 12, 1998 request was made more than 30 days after the Office's May 15, 1998 denial and more than 30 days after the date appellant acknowledged receipt of the Office's May 15, 1998 decision, the Office was correct in finding in its April 13, 1999 decision that appellant was not entitled to a hearing as a matter of right. The Office also exercised its discretion and further considered the request for review, but concluded that appellant could pursue her claim by requesting reconsideration along

² 5 U.S.C. § 8124(b)(1).

³ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

⁴ *Henry Moreno*, 39 ECAB 475 (1988).

with the submission of medical evidence. The Office exercised its discretionary powers in denying appellant's request for a hearing, and in so doing, did not act improperly.⁵

The decision of the Office of Workers' Compensation Programs dated April 13, 1999 is hereby affirmed.

Dated, Washington, DC
November 9, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁵ *Ella M. Garner*, 36 ECAB 238 (1948).