

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES C. BELL and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Albany, NY

*Docket No. 99-2086; Submitted on the Record;
Issued September 21, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely filed.

On July 11, 1997 appellant, a 47-year-old operations supervisor, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he sustained injuries to his neck and left shoulder while in the performance of duty on June 1, 1997. He explained that he heard a noise and when he turned his head in the direction of the noise, he felt a sharp pain over his left eye, neck and left shoulder. Appellant ceased working on June 2, 1997. In support of his claim, he submitted a July 11, 1997 letter from his chiropractor, Dr. Jerald M. Stender, wherein he indicated that appellant was being treated for a workers' compensation accident and, due to the severity of his condition, appellant would be unable to work for a period of two weeks. Dr. Stender, however, did not describe the nature of appellant's injury or the specific cause of the injury. The employing establishment controverted appellant's claim based on the fact that he delayed reporting his claimed injury for approximately six weeks. The employing establishment also noted that the medical evidence submitted did not demonstrate that an employment-related injury had occurred as alleged.

In August 1997, the Office requested additional factual and medical information from both appellant and his chiropractor. The Office, however, did not receive a response within the 30 days allotted for the submission of the requested information. On September 9, 1997 the Office issued a decision denying compensation based on appellant's failure to establish that he sustained an injury as alleged. Approximately 11 months later, appellant requested an oral hearing before an Office hearing representative, which was postmarked August 4, 1998.

By decision dated September 22, 1998, the Office found that appellant did not submit his request for an oral hearing within 30 days of the Office's September 9, 1997 decision, and therefore, he was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issue involved, and denied appellant's request on the

basis that the issue of whether he sustained a work-related injury on June 1, 1997 could equally well be addressed through the reconsideration process. Appellant subsequently filed an appeal with the Board on June 8, 1999.¹

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² As appellant filed his appeal with the Board on June 8, 1999, the Board lacks jurisdiction to review the Office's most recent merit decision dated September 9, 1997. Consequently, the only decision properly before the Board is the Office's September 22, 1998 decision denying appellant's request for an oral hearing.

The Board finds that the Office properly denied appellant's request for an oral hearing as untimely filed.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for an oral hearing must be submitted, in writing, within 30 days of the date of issuance of the Office's decision. A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision, as determined by the postmark of the request.³ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁴ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁵

As previously noted, the Office denied appellant's claim for compensation in a decision dated September 9, 1997. Appellant's request for an oral hearing was postmarked August 4, 1998, which is more than 30 days after the Office's September 9, 1997 decision. As such, appellant is not entitled to an oral hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary hearing and correctly advised appellant that the issue of whether he sustained a work-related injury on June 1, 1997 could equally well be addressed through the reconsideration process.⁶ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.

The September 22, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

¹ Appellant submitted additional medical evidence on appeal. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

² *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

³ 20 C.F.R. § 10.131(a) and (b).

⁴ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁵ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁶ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).

Dated, Washington, DC
September 21, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member