

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE ROSS and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 99-2526; Submitted on the Record;
Issued April 20, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing on July 20, 1999.

Appellant, a 30-year-old custodian, filed a notice of traumatic injury on August 26, 1980 alleging that he injured his back in the performance of duty. The Office of Workers' Compensation Programs accepted his claim for herniated discs at L3-4 and L4-5 as well as a laminectomy on February 12, 1982.

By decision dated September 16, 1996, the Office terminated appellant's compensation finding that he failed to work for reasons other than his accepted employment injury. Appellant requested an oral hearing in a letter postmarked July 31, 1997. By decision dated September 17, 1997, the Branch of Hearings and Review denied appellant's request as untimely.¹ Appellant again requested an oral hearing by letter postmarked May 21, 1999. By decision dated July 20, 1999, the Office denied this request as untimely.

The Board finds that the Office acted within its discretion in denying appellant's request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act,² concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on

¹ As the September 16, 1996 and September 17, 1997 decisions were issued more than one year prior to the date of appellant's appeal to the Board on August 11, 1999, the Board will not address these issues on appeal. 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary.”³

The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.⁴ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.⁵

In this case, the Office properly determined that appellant’s May 21, 1999 request for a hearing was not timely filed as the request was made more than 30 days after the issuance of the Office’s September 16, 1996 decision. The Office, therefore, properly denied appellant’s hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing. The Office determined that a hearing was not necessary because the issue in the case could be resolved through the submission of evidence in the reconsideration process. Therefore, the Office properly denied appellant’s request for a hearing as untimely and properly exercised its discretion in determining to deny appellant’s request for a hearing as he had other review options available.

The July 20, 1999 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 20, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

³ 5 U.S.C. § 8124(b)(1).

⁴ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁵ *Id.*