

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK ZYSK and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

*Docket No. 99-1955; Submitted on the Record;
Issued February 27, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

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

In a prior appeal, the Board found an unresolved conflict of the medical opinion evidence regarding whether appellant had continuing disability and medical residuals due to his April 5, 1995 injuries of neck sprain and subluxation at C5.¹ The Board concluded that the Office failed to meet its burden of proof to terminate appellant's compensation effective November 15, 1995 due to this unresolved conflict. The facts and circumstances as set out in the prior decision are adopted herein by reference.

The Office undertook further development of the medical evidence. By decision dated October 26, 1998, the Office found that appellant had no continuing condition or disability causally related to his April 5, 1995 employment injury. The Office did not address the termination issue directly.

Appellant requested an oral hearing and by decision dated March 18, 1999, the Office's Branch of Hearings and Review set aside the October 26, 1998 decision on the grounds that appellant had not received proper notice and time to submit new evidence prior to the termination of his compensation. The Branch of Hearings and Review stated that as of March 18, 1999 the October 26, 1998 decision should be considered notice of the Office's proposal to terminate appellant's compensation benefits and that appellant had 30 days from March 18, 1999 to submit additional evidence.

¹ Docket No. 96-1693 (issued July 1, 1998).

Appellant submitted additional evidence on April 14, 1999. By decision dated April 23, 1999, the Office terminated appellant's compensation. Appellant requested an oral hearing on April 29, 1999. By decision dated June 10, 1999, the Branch of Hearings and Review stated that appellant had previously requested reconsideration of this decision and was not entitled to an oral hearing as a matter of right.

The Board finds that the Branch of Hearings and Review improperly denied 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 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 regulations governing hearings state in pertinent part:

"(a) A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."⁴

In this case, appellant received a final adverse decision on the issue of his continuing disability due to his April 5, 1995 employment injury on April 23, 1999. Appellant requested an oral hearing on April 29, 1999. This request was made within 30 days from the date of the adverse decision. Therefore, the request was timely.

The Branch of Hearings and Review denied appellant's request on the grounds that he had requested reconsideration of the same decision on April 14, 1999. The record shows, however, that appellant had not requested reconsideration of the April 23, 1999 decision, but rather of an April 6, 1999 decision regarding the termination of medical benefits on a separate claim. Therefore, the Branch of Hearings and Review improperly denied appellant's request for an oral hearing. On remand, the Branch of Hearings and Review shall schedule an oral hearing in accordance with appellant's timely request.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.616(a).

The June 10, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside, and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
February 27, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member