

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL F. MALONEY and U.S. POSTAL SERVICE,
POST OFFICE, Fresno, CA

*Docket No. 00-1754; Submitted on the Record;
Issued May 2, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant is entitled to a schedule award for his accepted condition of right inguinal strain; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's January 7, 2000 request for a hearing.

On November 10, 1997 appellant, a 48-year-old motor vehicle operator, sustained a right inguinal strain while in the performance of duty. He returned to work in a limited-duty capacity shortly after his injury and on April 20, 1998 he accepted a permanent light-duty assignment as a modified motor vehicle operator, with restrictions of no lifting or pushing more than 25 pounds.¹

On October 26, 1999 appellant filed a claim for a schedule award. The Office denied appellant's claim by decision dated November 15, 1999. In so doing, the Office explained that the Federal Employees' Compensation Act did not provide for the payment of a schedule award for the type of injury appellant sustained.

Appellant subsequently requested a hearing on January 7, 2000. In a decision dated March 6, 2000, the Office found that appellant's request for a hearing was untimely and therefore, appellant 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 could equally well be addressed through the reconsideration process.

The Board finds that appellant failed to establish entitlement to a schedule award for his accepted condition of right inguinal strain.

Section 8107(a) of the Act provides in relevant part: "If there is permanent disability involving the loss or loss of use, of a member, or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability, as provided by

¹ Appellant's treating physician, Dr. Robert A. Graham, reviewed the position description and concurred that that offered position met with appellant's medical restrictions.

the schedule in subsection (c)...”² A schedule award is not payable for loss or loss of use, of any member, organ or function of the body not specifically enumerated under the Act or regulations.³ Moreover, a schedule award is not payable for permanent impairment of the body as a whole.⁴ Appellant’s claim was accepted for inguinal strain and neither the Act nor the regulations specifically provide for payment of a schedule award for such a condition.⁵ Therefore, appellant has failed to establish entitlement to a schedule award under the Act.

The Board also finds that the Office properly denied appellant’s January 7, 2000 request for a hearing.

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 either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.⁶ If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁷ 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.⁸

Inasmuch as appellant’s January 7, 2000 request for a hearing post-dated the Office’s November 15, 1999 decision by more than 30 days, the Office properly concluded that he was not entitled to a hearing as a matter of right.⁹ Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether he was entitled to a schedule award as a result of his November 10, 1997 employment injury could equally well be addressed by requesting reconsideration.¹⁰ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant’s untimely request for a hearing.

² 5 U.S.C. § 8107(a). Subsection (c) sets forth the specific members or functions of the body for which a schedule award may be granted and the maximum number of weeks of compensation to be paid. 5 U.S.C. § 8107(c). Additional schedule members are set forth under 20 C.F.R. § 10.404(a).

³ *Ann L. Tague*, 49 ECAB 453, 454 (1998); *Thomas E. Stubbs*, 40 ECAB 647 (1989).

⁴ *James E. Mills*, 43 ECAB 215 (1991).

⁵ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) (1999).

⁶ 20 C.F.R. § 10.616(a) (1999).

⁷ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁹ 20 C.F.R. § 10.616(a) (1999).

¹⁰ 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).

The decisions of the Office of Workers' Compensation Programs dated March 6, 2000 and November 15, 1999 are hereby affirmed.

Dated, Washington, DC
May 2, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member