

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOMENIC A. SANTORO and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Waterbury, CT

*Docket No. 00-2118; Submitted on the Record;
Issued May 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

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

On May 29, 1992 appellant, then a 60-year-old letter carrier, sustained a left knee injury when a dog attacked him. The Office accepted a left knee strain and medial meniscus tear.

On May 8, 1999 appellant filed a claim for a schedule award. By decision dated December 15, 1998, the Office granted appellant a schedule award based on an eight percent permanent impairment of the left lower extremity.

By letter dated January 4, 1999, appellant requested an oral hearing. By letter dated March 6, 1999, the Office's Branch of Hearings and Review advised appellant that a hearing would be held on April 19, 1999.

By letter dated April 19, 1999, appellant withdrew his request for a hearing because he was scheduled for knee surgery on May 4, 1999.

In an undated letter received by the Office on November 18, 1999, appellant requested an oral hearing regarding the Office's December 15, 1998 decision.

By decision dated March 6, 2000, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was not timely filed within 30 days of the Office's December 15, 1998 decision and that the issue in the case could be resolved equally well by a request for reconsideration or a claim for an additional schedule award.

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.¹ As

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

appellant filed his appeal with the Board on May 31, 2000, the only decision properly before the Board is the Office's March 6, 2000 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's December 15, 1998 decision granting appellant a schedule award for an eight percent permanent impairment of the left lower extremity.²

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

Section 8124(b) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.³ 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.⁴ Appellant's request for a hearing was dated November 11, 1999, more than 30 days after the Office's December 15, 1998 decision. Therefore, appellant was not entitled to a hearing as a matter of right.⁵ The Office further considered appellant's request for an oral hearing and properly determined that the issue in the case, whether appellant had more than an eight percent permanent impairment of the left upper extremity, could be addressed equally well by a request for reconsideration or a claim for an additional schedule award.

² See *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ See 5 U.S.C. § 8124(a).

⁴ See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990); see also 20 C.F.R. § 10.616(a).

⁵ As noted above, although appellant's first request for an oral hearing was timely made within 30 days of the Office's December 15, 1998 decision, appellant withdrew that request.

The March 6, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 23, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member