

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH M. ATKINSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Richmond, VA

*Docket No. 00-1470; Submitted on the Record;
Issued October 18, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On June 26, 1997 appellant, then a 50-year-old equipment operator, filed an occupational disease claim alleging that he suffered from work-related stress.

In a decision dated February 10, 1998, the Office denied compensation on the grounds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

On October 10, 1999 appellant filed a request for an oral hearing.¹

Appellant filed a request for recurrence of disability on October 25, 1999.

On November 10, 1999 the Office advised appellant that no action could be taken on his claim for a recurrence of disability as he failed to establish his entitlement to compensation based on a work-related injury in the original claim.

On January 4, 2000 the Office denied appellant's request for a hearing as untimely filed. The Office also noted that appellant was not entitled to a hearing since the issue in the case could be equally well addressed through the reconsideration process.

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

¹ Appellant's representative argued that a hearing request had been filed on February 26, 1998, but the record does not support a finding that the request was received by the Office as alleged.

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.² 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.³ As appellant's October 10, 1999 request for a hearing was dated more than 30 days after the Office's February 10, 1998 decision, appellant was not entitled to a hearing as a matter of right. The Office further considered appellant's request for a hearing and determined that the issue of performance of duty could be equally well resolved through a request for reconsideration. Accordingly, the Board finds that the Office did not abuse its discretion in its denial of appellant's request for a hearing.

The decision of the Office of Workers' Compensation Programs dated January 4, 2000 is hereby affirmed.

Dated, Washington, DC
October 18, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² See 5 U.S.C. § 8124(b).

³ See 20 C.F.R. § 10.616(a) (1999); *Charles J. Prudencio*, 41 ECAB 499, 501 (1990).