

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOAN MARIE STARK and U.S. POSTAL SERVICE,  
POST OFFICE, Lehigh Valley, PA

*Docket No. 01-1648; Submitted on the Record;  
Issued August 26, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

On May 13, 1993 appellant, then a 38-year-old letter carrier filed a traumatic injury claim alleging that on April 17, 1993 she suffered a left-side neck and head injury when she hit her head on a mail container at work. The claim A3-187015, was accepted for a cervical strain on November 18, 1993. On September 25, 1996 appellant filed a claim for a recurrence of disability but was advised to file for an occupational disease instead. On February 12, 1997 appellant filed a claim (A3-224621) for an occupational disease commencing February 29, 1996. The two claims were doubled with the master file number of A3-187015.

Appellant's claim was denied by decision dated May 15, 1997. By letter dated May 27, 1997, appellant requested an oral hearing before an Office hearing representative. A hearing was held on September 29, 1999. By summary decision, the hearing representative remanded the case to the Office for further development of the evidence. By decision dated February 10, 1998, the Office denied appellant's claim finding that the evidence or record failed to establish that the claimed disability is causally related to the exposure on or prior to February 18, 1996 or the traumatic injury of April 17, 1993.

Appellant appealed to the Board. In a January 27, 2000 decision, the Board found that the case was not in posture for decision because the record was incomplete. The case was remanded for reconstruction of the record.

After a complete record was established, the Office reissued its February 10, 1998 decision on March 8, 2000 with appeal rights.

By letter postmarked July 22, 2000, appellant requested an oral hearing before the Branch of Hearings and Review.<sup>1</sup> By decision dated August 15, 2000, the Branch of Hearings and Review denied appellant's request on the grounds that the request was made more than 30 days after the issuance of a final decision by the Office and that the issue in the case could equally well be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which establishes that appellant sustained a recurrence of her April 17, 1993 injury.

By letter dated September 8, 2000, appellant again requested an oral hearing before an Office hearing representative. By letter dated October 10, 2000, the Office explained to appellant that the Branch of Hearings and Review issued an August 15, 2000 decision regarding an oral hearing and reminded her of the time limitation to appeal that decision as well as time limitations on the March 8, 2000 Office decision.

By letter dated November 4, 2000, appellant requested an oral hearing before an Office hearing representative. By letter dated January 4, 2001, the Office explained that the Branch of Hearings and Review had issued a decision on August 15, 2000, sent her an additional copy of that decision and again stated that there are time limits on her appeal rights.

By letter dated January 20, 2001, appellant stated that she did not receive the Office's March 8, 2000 decision and requested an oral hearing before an Office hearing representative. By letter dated May 8, 2001, a hearing representative explained that the Office's March 8, 2000 decision was sent to appellant's address of record and was not returned to the Office. The hearing representative also stated that the August 15, 2000 decision issued by the Branch of Hearings and Review was in accordance with the provisions of the Act and will not be overturned. The hearing representative explained appellant's appeal rights.

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.<sup>2</sup> As appellant filed her appeal with the Board on June 11, 2001, the Board lacks jurisdiction to review the Office's most recent merit decision dated March 8, 2000. Consequently, the only decision properly before the Board is the Office's August 15, 2000 decision denying appellant's request for an oral hearing.

The Board finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office hearing representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is

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<sup>1</sup> Appellant also stated that she never received the March 8, 2000, Office decision. However, the record supports that the decision was sent to the address of record and was not returned to the Office as undeliverable. It is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual *A.C. Clyburn*, 47 ECAB 153 (1995).

<sup>2</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>3</sup> 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.<sup>4</sup>

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>5</sup> Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,<sup>6</sup> when the request is made after the 30-day period for requesting a hearing<sup>7</sup> and when the request is for a second hearing on the same issue.<sup>8</sup>

In the present case, appellant’s hearing request was made more than 30 days after the date of issuance of the Office’s prior decision dated March 8, 2000 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter postmarked July 22, 2000. Therefore, the Office was correct in finding in its August 15, 2000 decision that appellant was not entitled to a hearing as a matter of right because her hearing request was not made within 30 days of the Office’s March 8, 2000 decision.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its August 15, 2000 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant’s hearing request on the basis that the case could be resolved by submitting additional evidence to establish that her claimed recurrence of disability was causally related to her accepted April 17, 1993 injury. The Board has held that as the only limitation on the Office’s authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>9</sup> In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant’s hearing request which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant’s request for a hearing under section 8124 of the Act.

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>5</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>6</sup> *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

<sup>7</sup> *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>8</sup> *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>9</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision dated August 15, 2000 of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
August 26, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member