

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONJA L. JONES and DEPARTMENT OF THE TREASURY, INTERNAL
REVENUE SERVICE, Chicago, IL

*Docket No. 02-1024; Submitted on the Record;
Issued December 4, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing on the grounds that it was not timely filed.

The Office accepted that, on March 25, 1982, appellant, then a 30-year-old revenue officer trainer, in the collections division, sustained a contusion of the "upper thoracic spine area" when she fell off a chair backwards.

On February 23, 1984 appellant filed a claim for a recurrence of disability for the period December 22, 1983 to January 22, 1984. In support of her claim, she submitted a December 29, 1983 chart note from Dr. J. Walsh, an attending physician, noting her complaints of low back pain, but not addressing whether she was disabled for work.¹ Appellant also submitted a January 5, 1984 x-ray report showing no evidence of spinal fracture and 1982 treatment records from Dr. Glenn C. Landon, an attending orthopedist.

By decision dated August 10, 1984, the Office denied appellant's claim for a December 22, 1983 recurrence of disability on the grounds that she submitted insufficient rationalized medical evidence to establish a causal relationship between the accepted March 25, 1982 injury and the claimed recurrence of disability.²

¹ In April 25 and June 4, 1984 letters, the Office advised appellant of the type of medical and factual evidence needed to establish her claim, including a rationalized report from her attending physician explaining how and why the claimed disability for work from December 22, 1983 to January 22, 1984 was related to the accepted thoracic back contusion.

² The record contains an October 15, 2001 letter from the Office, noting that a decision regarding a denial of a recurrence of disability pursuant to Claim No. 100322145 was enclosed. However, there is no decision of record dated in October 2001 addressing the issue of a recurrence of disability. Also, on appeal, appellant's representative did not specifically appeal such a decision.

The record demonstrates that appellant filed an April 2001 claim for depression and a claim for a June 2001 recurrence of disability related to depression which she attributed, in part, to chronic back pain. These claims, assigned Claim Nos. 06021475 and 062048117, were denied by an October 31, 2001 decision. These claims and the October 31, 2001 decision are not before the Board on the present appeal.³

In a letter dated and postmarked November 26, 2001, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review, pursuant to Claim No. 100322145, the 1982 back injury. She did not mention her emotional condition claim in this request.

By decision dated January 8, 2002, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was untimely filed. The Office found that the final decision in the case was issued on August 10, 1984 and that appellant's request for an oral hearing was postmarked November 26, 2001, more than 30 days after the August 10, 1984 decision. The Office further found that her request for an oral hearing would be considered timely regarding the emotional condition claim, Claim No. 062038117. The Office directed that appellant's request for an oral hearing on the emotional condition claim be processed.

The Board finds that the Office properly denied appellant's November 26, 2001 request for an oral hearing on the grounds that it was untimely filed.

Section 8124(b) of the Federal Employees' Compensation Act, 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."⁴

The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely made after the 30-day period established for requesting a hearing or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁵

In this case, the Office accepted that appellant sustained a back injury on March 25, 1982. On February 23, 1984 she filed a claim for a recurrence of disability for the period December 22, 1983 to January 22, 1984. The Office denied this claim by decision dated August 10, 1984 on the grounds of insufficient evidence. Appellant's request for an oral hearing on the August 10, 1984 decision was dated and postmarked November 26, 2001. As her November 26, 2001

³ In the application for appeal, appellant's representative appealed only Claim No. 100322145 relating to the 1982 back injury. Also, as he was granted an oral hearing pursuant to the emotional condition claim, it is likely that appellant wished to pursue that hearing in lieu of an appeal to the Board.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ *Henry Moreno*, 39 ECAB 475 (1988).

request was dated and postmarked more than 30 days after the August 10, 1984 decision, the Office was correct in denying the request on the grounds that it was untimely.

The next element to be considered is whether the Office properly exercised its discretion regarding appellant's request after it was found untimely. Her November 26, 2001 letter requesting an oral hearing mentioned only Claim No. 100322145, the 1982 back injury. Appellant did not mention her emotional condition claim in this request. However, in the January 8, 2002 decision denying appellant's request for an oral hearing on the back injury claim, the Office's Branch of Hearings and Review found that appellant's request for an oral hearing was timely regarding the emotional condition claim and directed that her request for an oral hearing on the emotional condition claim be processed.

The Board finds that the Office exercised its discretion in determining that, while appellant's November 26, 2001 request for an oral hearing regarding the August 10, 1984 decision in the back injury claim was clearly untimely, her request could be construed as a timely request for an oral hearing on the emotional condition claim, as the final decision in that claim was issued on October 31, 2001, less than 30 days prior to appellant's November 26, 2001 request. The Board notes that, while the Office omitted the standard language used to indicate an exercise of discretion, the exercise was clear from its determination of the timeliness of the oral hearing request on the emotional condition claim. The Board, therefore, concludes that the Office's exercise of discretion was in keeping with the Office's broad discretionary authority and was proper under the facts and circumstances of this case.

On appeal, appellant, through her representative, asserted that the Board should reverse the January 8, 2002 decision denying her request for an oral hearing on the March 25, 1982 back injury claim on the grounds that the Office committed error by failing to review the reports of Dr. M. Saleh. The Board notes that there are no reports of record from a Dr. Saleh and that it is, therefore, unclear why the Office would have committed error by failing to review such reports. The Board, therefore, finds this argument without merit.

The decision of the Office of Workers' Compensation Programs dated January 8, 2002 is hereby affirmed.

Dated, Washington, DC
December 4, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member