

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS BURNS and U.S. POSTAL SERVICE,  
POST OFFICE, Denver, CO

*Docket No. 00-1590; Submitted on the Record;  
Issued February 12, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to exercise jurisdiction over appellant's request for reconsideration.

On February 28, 1990 appellant, then a 50-year-old letter carrier, filed a notice of occupational disease alleging a lower back and hip condition due to factors of his employment.<sup>1</sup> The Office accepted the claim for aggravation of spondylolysis, aggravation of left hip arthritis and a left hip reconstruction.

On April 28, 1997 the Office issued a schedule award to appellant for 37 percent permanent impairment of the left leg due to his employment injury.

Appellant subsequently requested an oral hearing by letter postmarked June 4, 1997.

In a decision dated July 14, 1997, an Office hearing representative determined that appellant's hearing request, postmarked June 4, 1997, was not timely filed within 30 days of the issuance of the Office's schedule award decision on April 28, 1997. It was further noted that "the issue in this case [could] equally well be addressed by requesting reconsideration from the district [O]ffice and submitting evidence not previously considered which establishes that [he had] an increase of permanent partial loss of use of your left leg beyond the 37 [percent] which was previously award." Appellant was also advised that he could alternatively appeal the case to the Board.

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<sup>1</sup> The case was doubled with a prior traumatic injury claim involving the back. The date of the back injury was October 3, 1997.

On February 7, 2000 appellant requested reconsideration of the July 14, 1997 Office decision denying his hearing request.<sup>2</sup>

In a decision dated March 2, 2000, the district Office denied appellant's February 7, 2000 reconsideration request for lack of jurisdiction to review decisions of the Branch of Hearings and Review.

The Board finds that the district Office properly denied appellant's reconsideration request for lack of jurisdiction.

In addressing what constitutes a "reconsideration," the Office regulations state as follows: "The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision."<sup>3</sup> The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>4</sup> In this case, although appellant filed a reconsideration request, the nature of that request was not to request "review of an award for or against compensation." Rather, appellant requested that the Office review the Office hearing representative's determination that his hearing request had been untimely filed. Appellant did not follow the instructions set forth in the July 14, 1997 decision regarding reconsideration, which explained to him that he would have to submit additional evidence showing an increase in his permanent partial impairment of the left leg. Moreover, appellant in his reconsideration request did not even mention the Office's schedule award or allude to error with regard to the Office's April 28, 1997 decision. The reconsideration request was limited to contesting the Office hearing representative's July 14, 1997 hearing denial, and an informational letter issued by the Office on March 31, 1997. Appellant's reconsideration request concerned only the denial of the hearing request and did not ask the Office to review the schedule award itself. The Board concludes that the district Office properly denied appellant's reconsideration request on the grounds that it lacked jurisdiction to review the hearing representative's decision. The Office also correctly noted that appellant had been informed of his appeal rights by the Office hearing representative, and that appellant's only recourse was to file an appeal with the Board.

Because appellant did not file an appeal with the Board within one year of the July 14, 1997 decision, the Board lacks jurisdiction to review the propriety of the denial of appellant's hearing request.<sup>5</sup> The Board also lacks jurisdiction to review the March 31, 1997 Office letter as it was only informational in nature and does not constitute an Office decision.<sup>6</sup>

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<sup>2</sup> Appellant's representative also requested reconsideration of a March 31, 1997 letter informing appellant that since he had been reemployed on March 17, 1997 he was removed from the periodic rolls for wage-loss compensation.

<sup>3</sup> 20 C.F.R. § 10.605.

<sup>4</sup> 20 C.F.R. § 10.606(a) (1999).

<sup>5</sup> The Board's regulations provide that an appeal must be filed within one year from the date of issuance of a final decision of the Office. 20 C.F.R. § 501.3(d)(2).

<sup>6</sup> Regarding what constitutes a decision of the Office, *see* 20 C.F.R. § 10.126 (1999).

The decision of the Office of Workers' Compensation Programs dated March 2, 2000 is hereby affirmed.

Dated, Washington, DC  
February 12, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member