

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MANUEL B. MADRID and U.S. POSTAL SERVICE,
POST OFFICE & DISTRIBUTION CENTER, Los Angeles, CA

*Docket No. 01-2189; Submitted on the Record;
Issued June 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant is entitled to more than a 20 percent permanent impairment of his left leg for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs acted within its discretion in denying appellant's request for an oral hearing.

On May 18, 1999 appellant, then a 42-year-old maintenance mechanic, filed a notice of traumatic injury alleging that he injured his left knee on May 17, 1999 while playing racquetball during a temporary-duty assignment. The Office accepted appellant's claim for dislocation of the left knee and left knee arthroscopy as work related.

By letter dated November 27, 2000, the Office requested that appellant's treating physician, Dr. Carlos Lugo, a Board-certified orthopedic surgeon, determine the extent of the impairment of appellant's left leg by using the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. On April 26, 2001 the district medical adviser found a 20 percent permanent impairment of appellant's left lower extremity, based on a July 27, 2000 report from Dr. Lugo. By decision dated May 9, 2001, the Office awarded appellant a 20 percent schedule award for the lower left extremity. By letter dated May 28, 2001, appellant requested an oral hearing. By decision dated August 1, 2001, the Office denied appellant's request for an oral hearing as untimely.

The Board has reviewed the record and finds that the Office improperly denied appellant's request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is 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."¹ As section 8124(b) is unequivocal in setting forth the time

¹ 5 U.S.C. § 8124(b)(1).

limitations 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.² Therefore, a request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of issuance of the decision.³ Under the regulations implementing this section, the postmark of the request determines the date of the request.⁴ Even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion.⁵

In the case at hand, the Office, in its August 1, 2001 decision, noted that appellant's request "was postmarked June 12, 2001." The Board, after a careful review of the record, is unable to determine how the Office arrived at this conclusion. In his letter dated May 28, 2001, appellant requested an oral hearing with respect to the May 9, 2001 decision. The Office stamped this letter as received on June 12, 2001. However, there is no envelope or other indication in the record as to when the request was postmarked. The regulation specifies the date of the request is deemed "made" should be "determined by the postmark of the request," rather than the date the Office received the request.⁶ Accordingly, the Board will remand this case in order for the proper determination of date of filing to be made.

On remand, the Office should determine, if possible, the date appellant's request for a hearing under section 8124 was postmarked. If the date of postmark cannot be determined, the Office should presume the request was timely and grant the request, as it was the Office's responsibility to keep the envelope or otherwise keep evidence of the date of delivery in the case record.⁷

In light of the Board's decision on the issue of timeliness of appellant's request for a hearing, the Board will not consider on this appeal the issue of whether appellant was entitled to a schedule award of more than 20 percent.

² *Delmont T. Thompson*, 51 ECAB ____ (Docket No. 97-988, issued November 1, 1999).

³ 20 C.F.R. § 10.616(a).

⁴ *Id.*

⁵ *Lawrence C. Parr*, 48 ECAB 445, 451 (1997).

⁶ *Supra* note 3.

⁷ *Gus N. Rodes*, 43 ECAB 268 (1991).

The decisions of the Office of Workers' Compensation Programs dated August 1 and May 9, 2001 are hereby set aside and the case is remanded for further proceedings in accordance with this decision of the Board.

Dated, Washington, DC
June 5, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member