

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES C. MOORE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Nashville, TN

*Docket No. 01-914; Submitted on the Record;
Issued May 21, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

On December 7, 1994 appellant, then a 47-year-old mailhandler, filed a claim for an injury to his lower back on November 5, 1994. The Office accepted his claim for a low back strain.

By decision dated January 21, 2000, the Office terminated appellant's medical benefits on the grounds that the weight of the medical evidence of record established that his November 5, 1994 employment injury had resolved as of October 6, 1997. The Office provided appellant with a copy of his appeal rights.

By letter dated February 18, 2000 received by the Office on February 29, 2000, appellant stated that he disagreed with the Office's January 21, 2000 decision. He did not specify which of his appeal rights he wished to request.

By letter dated March 6, 2000, the Office asked appellant which of his three appeal options he wished to request, reconsideration, a hearing or an appeal to the Board, and referred him to the explanation of his appeal rights attached to the Office's January 21, 2000 decision.

By letter dated May 12, 2000, appellant stated that he wished a "hearing appeal."

By letter dated May 19, 2000, the Office noted appellant's request for a "hearing appeal," asked him to refer to the appeal rights attached to the January 21, 2000 decision, and requested that he clarify which of the appeal rights he wished.

By letter dated August 11, 2000, appellant requested an oral hearing before an Office hearing representative.

By decision dated November 6, 2000, the Office denied appellant's request for an oral hearing on the grounds that the request was not timely made within 30 days of the issuance of the January 21, 2000 decision.¹

The Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

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 request for a hearing was dated August 11, 2000, more than 30 days after the Office's January 21, 2000 decision, appellant was not entitled to a hearing as a matter of right. The Office then exercised its discretion and determined that the issue in the case could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's untimely request for a hearing.

The decision of the Office of Workers' Compensation Programs dated November 6, 2000 is affirmed.

Dated, Washington, DC
May 21, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ The record contains additional evidence which was not before the Office at the time it issued its November 6, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

² *See* 5 U.S.C. § 8124(b).

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