

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KHALSA S. MANJEET and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, San Francisco, CA

*Docket No. 02-1301; Submitted on the Record;  
Issued November 5, 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 as untimely filed.

On July 2, 1990 appellant, then a 24-year-old distribution clerk, filed a claim for a traumatic injury alleging that on June 6, 1990 he injured his back while in the performance of duty. The Office accepted his claim and paid appropriate benefits.

On September 15, 1995 appellant accepted a limited-duty position of modified clerk.

Appellant accepted a modified position from the employing establishment on April 21, 1998 and on June 24, 1998 the Office determined that appellant's modified position fairly and represented his wage-earning capacity.

In a report dated May 18, 2000, Dr. Desmond Erasmus, appellant's treating physician Board-certified in neurology, stated that appellant's back condition had worsened over time and that he was unable to work from May 17, 2000. Appellant stopped work on May 17, 2000. By letter dated June 28, 2000, the Office advised appellant of what kind of evidence he needed to support his claim for a recurrence of disability.

By decision dated October 13, 2000, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence he submitted failed to establish that his back condition "had worsened so that you could not continue working in the modified job you were performing prior to May 17, 2000."

In a letter postmarked October 11, 2001 and delivered by the post office on October 12, 2001 at 11:40 a.m., appellant requested an oral hearing. In the same letter, appellant requested "the Department of Labor to reconsider my request to pay me for the time off, as Dr. Erasmus

had submitted a new narrative report on July 9, 2001 attention it to Mr. Lopez, my claims examiner who denied my claim.”<sup>1</sup>

On January 23, 2002 the Office denied appellant’s request for a hearing as untimely filed. The Office also noted that appellant was not entitled to a hearing since the issue in the case could be equally well addressed through the reconsideration process.

The only decision before the Board is the denial of the hearing decision dated January 23, 2002. The last merit decision of the Office was dated October 13, 2000. Appellant’s appeal to the Board is dated April 26, 2002, more than one year following the October 13, 2000 decision.

The Board finds that the Office properly denied appellant’s hearing request as untimely filed.

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.<sup>2</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>3</sup> As appellant’s October 11, 2001 request for a hearing was dated more than 30 days after the Office’s October 13, 2000 decision, appellant was not entitled to a hearing as a matter of right. The Office further considered appellant’s request for a hearing and determined that the issue of performance of duty could be equally well resolved through a request for reconsideration. Accordingly, the Board finds that the Office did not abuse its discretion in its denial of appellant’s request for a hearing.

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<sup>1</sup> The Board notes that the Office has an outstanding request for reconsideration dated October 11, 2001 and signed for by an employee with the initials “GAD” on October 12, 2001.

<sup>2</sup> See 5 U.S.C. § 8124(b).

<sup>3</sup> See 20 C.F.R. § 10.616(a) (1999); *Charles J. Prudencio*, 41 ECAB 499, 501 (1990).

The decision of the Office of Workers' Compensation Programs dated January 23, 2002 is hereby affirmed.

Dated, Washington, DC  
November 5, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member