

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER F. CAMPER and GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDINGS SERVICE, Washington, DC

*Docket No. 01-1586; Submitted on the Record;
Issued September 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely filed.

This is the second appeal in this case.¹ On the first appeal the Board affirmed an April 10, 1992 decision, by which the Office found that the weight of the medical evidence established that appellant had no more than a 62 percent permanent impairment of his left upper extremity, for which he had received a schedule award. The complete facts of this case are set forth in the Board's August 9, 1993 decision and are herein incorporated by reference.

Subsequent to the Board's August 9, 1993 decision, appellant continued to seek an increase in the amount of his schedule award and in letters dated February 14, 1994 and February 23, 1996, the Office found that appellant had established no more than the 62 percent impairment, for which he had already received a schedule award. On April 9, 1998 appellant again sought an increase in his schedule award and submitted additional medical evidence in support of his request. After consulting with an Office medical adviser, in a decision dated August 20, 1998, the Office again found that appellant had not established any additional impairment of his left upper extremity, beyond the 62 percent previously awarded.

Subsequent to the Office's August 20, 1998 decision, appellant continued to submit regular medical reports from his treating physician, Dr. Tipkins Hood, in support of his request for a motorized wheelchair and an increased attendant allowance.² On April 7, 1999 the Office authorized the purchase of a motorized wheelchair and in a decision dated January 20, 2000, the Office increased appellant's attendant allowance to the maximum amount allowable.

¹ Docket No. 92-1921 (issued August 9, 1993).

² With the exception of a July 22, 1999 treatment note in which Dr. Hood stated that appellant's shoulder motion was about 60 percent of normal, appellant did not submit any medical evidence which discussed the level of impairment in his left upper extremity.

By letter postmarked January 4, 2001, appellant filed a request for an oral hearing before an Office representative. He specifically stated that he was contesting the Office's prior finding that he had only a 62 percent permanent impairment of his left upper extremity.

In a decision dated May 3, 2001, the Office denied appellant's request for a hearing as untimely filed. The Office also noted that appellant was not entitled to a hearing because the issue in the case could be equally well addressed through the reconsideration process.

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

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office's final decision.³ 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.⁴ In addition, the regulations interpreting the Act, make clear that the request for a hearing must contain a postmark or other carrier's mark that falls within 30 days following the issuance of the decision.⁵

As appellant's request for a hearing was postmarked January 4, 2001, more than 30 days after the Office's August 20, 1998 decision, appellant was not entitled to a hearing as a matter of right.

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁶ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing request when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.⁷

The Office, in its May 3, 2001, decision noted that appellant's request for a hearing was untimely filed and that consideration of the issue involving his entitlement to an increased schedule award could be equally well resolved through a request for reconsideration. Therefore, the Office properly exercised its discretion in denying appellant's request for a hearing.

³ 5 U.S.C. § 8124(b).

⁴ See 20 C.F.R. § 10.616(a) (1999); *Charles J. Prudencio*, 41 ECAB 499, 501 (1990).

⁵ 20 C.F.R. § 10.616(a).

⁶ *Linda J. Reeves*, 48 ECAB 373 (1997).

⁷ *Id.*; *Henry Moreno*, 39 ECAB 475 (1988).

The decision of the Office of Workers' Compensation Programs dated May 3, 2001 is hereby affirmed.

Dated, Washington, DC
September 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member