

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEA D. LIM and U.S. POSTAL SERVICE,  
DOMINICK V. DANIELS FACILITY, Keary, NJ

*Docket No. 03-625; Submitted on the Record;  
Issued April 16, 2003*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing; and (2) whether the Office abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On September 5, 2001 appellant, then a 35-year-old distribution clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on August 20, 2001, while performing her duties of retrieving, pitching and distributing mail, she sustained injuries to, *inter alia*, her left arm, both feet, lower back and neck. The employing establishment controverted appellant's claim.

In support of her claim, appellant submitted a Family Medical Leave Act form dated August 31, 2001 indicating that she was treated for back pain. A copy of this form was also submitted that added the dates September 21, October 8 and October 12, 2001. However, nothing else was changed on the form. The record also contained a request for authorization for physical therapy. By decision dated October 29, 2001 and finalized October 30, 2001, the Office denied appellant's claim for the reason that there was no medical evidence which stated that a medical condition had been diagnosed in connection with her employment.

On November 14, 2001 the Office received a statement from appellant wherein she indicated that she injured herself due to "leaning up against a unergonomic designed work stool." She noted that the activities performed for her work included tilting and bending her head forward to read mail, twisting movements to retrieve, pitch and distribute mail and prolonged feet bending to hold self upright on work stool. Appellant also submitted forms requesting leave. Finally, appellant submitted an illegible prescription by Dr. Rodrigo R. Lim, a neurologist.

By letter dated and postmarked November 30, 2001 and received by the Office on December 5, 2001, appellant requested a hearing. By decision dated January 23, 2002, the Office denied appellant's request for a hearing as it was untimely filed. The Office further

reviewed appellant's request under its discretionary power and further denied the request for the reason that the case could equally well be addressed by requesting reconsideration.

By letter received by the Office on July 23, 2002, appellant requested reconsideration. In support thereof, appellant submitted a September 12, 2001 report of a magnetic resonance imaging (MRI) scan on appellant's lumbosacral spine, which was interpreted by Dr. Romolo Maurizi, a Board-certified radiologist, as showing bulging discs at L5-S1 causing stenosis. Dr. Maurizi also indicated that there was no significant nerve root compression demonstrated, but that radiculopathy could not be ruled out.

By decision dated August 15, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and immaterial to the issue and, therefore, not sufficient to warrant review.

The only decisions before the Board on this appeal are the Office's January 23, 2002 decision denying an oral hearing and the August 15, 2002 decision denying appellant's request for reconsideration. Because more than one year has elapsed between the issuance of the Office's October 30, 2001 decision denying appellant's claim, and January 14, 2003, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review this decision.<sup>1</sup>

The Board finds that the Office properly denied appellant's request for a hearing.

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.<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> In addition, the regulations interpreting the Federal Employees' Compensation 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.<sup>4</sup>

Appellant's letter requesting a hearing was postmarked November 30, 2001, over 30 days after the October 30, 2001 decision. Therefore, 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.<sup>5</sup> The Office procedures, which require the

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.616(a).

<sup>5</sup> *Linda J. Reeves*, 48 ECAB 373 (1997).

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 Federal Employees' Compensation Act and Board precedent.<sup>6</sup>

The Office, in its January 23, 2002 decision, noted that appellant's request for a hearing was untimely filed and that consideration of the issue 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.

The Board finds that the Office properly denied appellant's request for reconsideration.

The Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence and argument that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

In this case, the only evidence that appellant submitted in support of her request for reconsideration were the results of an MRI conducted by Dr. Maurizi and a further statement by appellant as to how she was injured. However, the reason that the claim was initially denied was because appellant failed to submit medical evidence which links appellant's medical condition to her employment-related activities of August 20, 2001. Neither of these new documents constituted medical evidence establishing a causal relationship. Accordingly, as appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law, nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office, the Office properly denied appellant's request for reconsideration.

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<sup>6</sup> *Id.*; *Henry Moreno*, 30 ECAB 475 (1988).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

The decisions of the Office of Workers' Compensation Programs dated August 15 and January 23, 2002 are hereby affirmed.

Dated, Washington, DC  
April 16, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member