

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA D. GARCIA and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 03-631; Submitted on the Record;
Issued August 4, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established entitlement to a schedule award for her accepted injuries; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On September 22, 1994 appellant, then a 48-year-old clerk, filed a claim for occupational disease, alleging that her wrist strain was caused by her employment. Appellant stated that she was first aware of her condition and that it was caused by her employment on June 1, 1994. The employing establishment stated that appellant first reported her condition on June 2, 1994, and that she was last exposed to conditions alleged to have caused her condition on June 29, 1994.

On October 27, 1994 the Office accepted that appellant sustained bilateral wrist strains and bilateral trapezius strain, mild.

On January 19, 2000 appellant filed a second claim for occupational disease, alleging that her right shoulder condition was caused by her employment. Appellant stated that she was first aware of her condition on February 18, 1999, and that she first realized that it was caused by her employment on August 15, 1999. The employing establishment stated that appellant first reported her condition on September 17, 1999, and that she was last exposed to conditions alleged to have caused her condition on January 19, 2000. The Office accepted right shoulder tendinitis.

On April 30 and November 13, 2001 appellant filed claims for schedule awards. The Office doubled appellant's claims into a master claim, and referred her, along with a statement of accepted facts, a set of questions and the medical record to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for a second opinion evaluation. The Office requested that Dr. Sherman determine if appellant had reached maximum medical improvement and whether she was entitled to a schedule award.

Appellant submitted medical evidence consisting of reports dated September 10 and November 5, 2001 wherein work restrictions were noted, including a restriction to work only on the day shift. In a report dated November 13, 2001, Dr. Sherman stated that he had examined appellant that day and reported findings. He stated that appellant's complaints of neck and bilateral trapezius pain were without neurological or mechanical deficit and that her bilateral shoulder strains and bilateral carpal tunnel syndrome were resolved. Dr. Sherman noted that her date of maximum medical improvement was October 1, 1994. In a report dated December 24, 2001, the Office medical adviser reviewed Dr. Sherman's report and determined that according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ appellant had a zero percent impairment of the right upper extremity and a zero percent impairment of the left upper extremity, and that her date of maximum medical improvement was October 1, 1994.

By decision dated January 16, 2002, the Office denied appellant's claim for a schedule award.

In a letter dated May 14, 2002, appellant's union representative advised that she "personally had mailed from our union office and certified" the request for an oral hearing on February 15, 2002. That letter was postmarked May 14, 2002 and received by the Branch of Hearings and Review on May 20, 2002.² By decision dated July 1, 2002, an Office hearing representative denied appellant's request for an oral hearing on the grounds that the request was not made within 30 days after issuance of the Office's decision on January 16, 2002. The Office also noted that it carefully considered appellant's request, and determined that that request was further denied because the issues in the case could equally well be addressed by requesting reconsideration with the district office.

The Board finds that appellant's February 15, 2002 request for an oral hearing was timely filed.

The record indicates that appellant's union representative "personally had mailed from our union office and certified" the request for an oral hearing on February 15, 2002. The original of this letter is not contained in the case record, but the "mailbox rule" raises a presumption that the Office received this letter, as the copy shows a proper address and the union indicated it was mailed, certified, in the ordinary course of business.³ The evidence cited by the Office in its July 1, 2002 determination that the request for reconsideration was not timely is not sufficient to rebut the "mailbox rule" presumption in this case.⁴ The Board, therefore, finds that the February 15, 2002 request was duly mailed and represents a timely request for an oral hearing. The case will be remanded to the Office for scheduling of a hearing before an Office hearing representative.

¹ A.M.A., *Guides* (5th ed. 2001).

² The record indicates that this was faxed to the district office on February 19, 2002.

³ The union representative noted that she could not determine which receipt applied to this letter as she certified several cases at that time.

⁴ *Joan F. Martin*, 51 ECAB 131 (1999).

In view of the Board's disposition of appellant's request for a hearing, the issue of whether appellant is entitled to a schedule award is premature.

The decisions of the Office of Workers' Compensation Programs dated July 1 and January 16, 2002 are set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
August 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member