

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHERRI D. SHIELDS and U.S. POSTAL SERVICE,  
TIPTON POST OFFICE, Tipton, CA

*Docket No. 03-1404; Submitted on the Record;  
Issued July 23, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed a leg condition due to factors of her federal employment and; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on February 21, 2003.

On September 20, 2002 appellant, a 40-year-old rural carrier, filed a notice of occupational disease alleging that she developed a leg and tendon injury due to driving a left-hand drive vehicle in the performance of duty. In a letter dated October 27, 2002, the Office requested additional factual and medical evidence. By decision dated February 4, 2003, the Office denied appellant's claim finding that she failed to submit any medical evidence.

In a letter dated February 9, 2003, appellant requested, "*OWCP reconsideration (Reconsideration) Request for Rehearing.*" (Emphasis in the original.) By decision dated February 21, 2003, the Office declined to reopen appellant's claim for consideration of the merits.

The Board finds that this case is not in posture for a decision.

The Office issued its merit decision on February 4, 2003. In a letter dated February 9, 2003 and stamped as received by the Office on February 18, 2003, appellant requested both a hearing and reconsideration. Following this dual request, the Office issued a nonmerit decision on February 21, 2003.

An appellant is entitled to a timely requested hearing under section 8124(b)(1) of the Federal Employees' Compensation Act only before reconsideration is granted under section 8128.<sup>1</sup> When a request for a hearing under section 8124(b)(1) and for reconsideration under

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<sup>1</sup> 5 U.S.C. §§ 8101-8193, § 8124(b).

section 8128 of the Act is simultaneously made, the Office must properly consider a claimant's request for a hearing first to avoid creating a conflict with the requirements of section 8124(b)(1) that a hearing may be granted only before review under section 8128(a).<sup>2</sup> Furthermore, the Office's procedure manual states that requests for oral hearings or written review received in the district office should be treated as priority mail and that if the Office determines that a final decision has been issued then the Office will forward the request for hearing or review and the case file to the Branch of Hearings and Review.<sup>3</sup>

The Office failed to follow Board precedent, by addressing appellant's request for an oral hearing prior to her simultaneous request for reconsideration, and the procedure manual. The Board will set aside the February 21, 2003 decision and remands the claim for consideration of appellant's hearing request with the Branch of Hearings and Review.

The Office of Workers' Compensation Programs' February 21, 2003 decision is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC  
July 23, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>2</sup> *Mary B. Allen*, 40 ECAB 190, 194 (1988).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.3(a) (January 1999).