

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH S. HAYWOOD and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Brooklyn, NY

*Docket No. 02-2168; Submitted on the Record;
Issued March 21, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On May 13, 2001 appellant, then a 56-year-old internal revenue agent, filed an occupational disease claim. He alleged that he developed chronic back, shoulder, neck and chest pains attributable to muscle spasms and rheumatoid arthritis and that his condition was caused by being required to sit in an upright position at a computer for an extended period of time.

In a report dated May 8, 2001, Dr. Babu N. Jasty, a Board-certified internist and a cardiologist, stated that he had treated appellant for hypertension and chronic back pain since 1992 and that appellant was treated every two to three months. He noted that a magnetic resonance imaging scan revealed degenerative changes and a small nondeforming herniated disc at C4-5 and 5-6. Dr. Jasty stated that appellant's back pain had been getting worse and he was unable to sit or stand for long periods of time.

By decision dated August 10, 2001, the Office denied appellant's claim on the grounds that the evidence of record was insufficient to establish that he sustained an injury causally related to factors of his employment.

By letter dated March 28, 2002, appellant requested an oral hearing.

By decision dated May 31, 2002, the Office denied appellant's request for a hearing on the grounds that the request was untimely and the issue in the case could be addressed equally well by a request for reconsideration and the submission of additional evidence.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

appellant filed his appeal with the Board on August 20, 2002, the only decision properly before the Board is the Office's May 31, 2002 decision denying his request for a hearing. The Board has no jurisdiction to consider the Office's August 10, 2001 decision denying his claim for compensation.²

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

Section 8124(b) of the 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.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 As appellant's request for a hearing was dated March 28, 2002, more than 30 days after the Office's August 10, 2001 decision, appellant was not entitled to a hearing as a matter of right. The Office exercised its discretion and determined that as the issue in the case was a medical issue, it could be pursued by submitting additional medical evidence through a request for reconsideration. The Board finds that the Office did not abuse its discretion in denying appellant's untimely request for a hearing.

The decision of the Office of Workers' Compensation Programs dated May 31, 2002 is affirmed.

Dated, Washington, DC
March 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ *See* 5 U.S.C. § 8124(a).

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