

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRLEY J. EMIG and U.S. POSTAL SERVICE,  
POST OFFICE, Dover, PA

*Docket No. 03-658; Submitted on the Record;  
Issued May 1, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

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

The Office accepted that appellant sustained left lateral epicondylitis and chronic left lateral forearm strain causally related to her federal employment as a rural carrier. By decision dated December 31, 2001, the Office denied the claim for a recurrence of disability as of May 2001.

In a letter dated and postmarked November 8, 2002, appellant requested an oral hearing on her claim.

By decision dated December 19, 2002, the Office's Branch of Hearings and Review determined that appellant's request was untimely and, therefore, she was not entitled to a hearing as a matter of right. The Branch of Hearings and Review further stated that it had considered appellant's request and found that the issue could equally well be addressed by requesting reconsideration and submitting evidence with respect to the recurrence of disability claim.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.<sup>1</sup> As appellant filed her appeal on January 16, 2003, the only decision over which the Board has jurisdiction on this appeal is the December 19, 2002 decision denying her request for an oral hearing.

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

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

Section 8124(b)(1) of the Federal Employees' Compensation Act provides in pertinent part:

"Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<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 this case, appellant's request for a hearing is dated and postmarked November 8, 2002. Since this is more than 30 days after the December 31, 2001 decision, it is untimely and appellant is not entitled to a hearing as a matter of right.

The Board has held that the Office, in its broad discretionary authority to administer the Act, has power to hold hearings in circumstances where no legal provision is made for such hearings, and the Office must exercise its discretion in such circumstances.<sup>4</sup> In this case, the Branch of Hearings and Review indicated that it had considered appellant's request and found that the issue could equally well be addressed through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.<sup>5</sup> The Board therefore finds that the Office properly denied appellant's request for a hearing in this case.

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> See *William F. Osborne*, 46 ECAB 198 (1994).

<sup>4</sup> *Mary B. Moss*, 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>5</sup> See *Mary E. Hite*, 42 ECAB 641, 647 (1991).

The decision of the Office of Workers' Compensation Programs dated December 19, 2002 is affirmed.

Dated, Washington, DC  
May 1, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member