

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. DUTY and U.S. POSTAL SERVICE,
POST OFFICE, Boynton Beach, FL

*Docket No. 03-2060; Submitted on the Record;
Issued October 17, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' denial of appellant's request for a hearing constituted an abuse of discretion.

On July 26, 1997 appellant, then a 36-year-old mail clerk, injured her lower back while reaching into a container of mail. She filed a claim for benefits, which the Office accepted for lumbosacral strain on August 11, 1997. The Office paid appropriate compensation.

By letter dated October 3, 2001, the Office advised appellant that a suitable position as a modified clerk was available and that, pursuant to section 8106(c)(2), she had 30 days to either accept the job or provide a written explanation for refusing the job offer. The Office stated that, if appellant refused the job or failed to report to work within 30 days, it would terminate her compensation pursuant to 5 U.S.C. § 8106(c)(2).¹ Appellant did not respond within 30 days.

By decision dated December 6, 2001, the Office terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work.

By letter dated January 10, 2002, appellant requested a hearing before an Office hearing representative. By decision dated February 25, 2002, the Office denied appellant's request for an oral hearing.

By letter dated April 11, 2003, appellant again requested a hearing before an Office hearing representative. By decision dated May 14, 2003, the Office denied appellant's request for a hearing. The Office stated that appellant's request was postmarked April 15, 2003, which was more than 30 days after the issuance of the Office's most recent merit decision issued on December 6, 2001, and that she was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's

¹ 5 U.S.C. § 8106(c)(2).

request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process.

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.² As appellant filed her appeal with the Board on August 12, 2003, the Board lacks jurisdiction to review the Office's merit decision dated December 6, 2001 or the February 25, 2002 hearing denial.

The Board finds that the Office did not abuse its discretion by denying appellant's request for a hearing before an Office hearing representative.

Section 8124(b)(1) 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 final decision.³ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁴ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁵ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁶

In the present case, appellant's April 11, 2003 request for a hearing was postmarked more than 30 days after the Office's December 6, 2001 termination decision. Therefore, she is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that she could pursue her claim through the reconsideration process. The Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.⁷

² *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. § 501.2(c), 501.3(d)(2).

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.131(a)(b).

⁵ *William E. Seare*, 47 ECAB 663 (1996).

⁶ *Id.*

⁷ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *See, e.g., Jeff Micono*, 39 ECAB 617 (1988).

The May 14, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 17, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member