

FACTUAL HISTORY

Appellant, a 47-year-old letter carrier, injured his left shoulder while reaching for and pulling a tub of mail on March 29, 2001. The Office accepted the claim for left shoulder strain. On September 17, 2002 appellant filed a Form CA-2a claim for a recurrence of disability, alleging that he sustained an injury on September 3, 2002 causally related to his accepted injury.

By decision dated October 30, 2002, the Office denied the claim for a recurrence of disability.

By letter dated November 19, 2002, received by the Office on November 27, 2002, appellant requested an oral hearing. The request, however, was never processed.

Appellant resent the November 19, 2002 letter requesting a hearing, by certified mail, to the Office. The letter was stamped as received by the post office on April 22, 2005 and was received by the Office on May 3, 2005.

By decision dated September 12, 2005, the Office denied appellant's request for an oral hearing. It found that, as his request was postmarked April 22, 2005 which was more than 30 days after the issuance of the October 30, 2005 decision, he was 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 request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

By letter dated December 15, 2005, appellant's attorney requested reconsideration. By decision dated January 23, 2006, the Office denied reconsideration without a merit review, finding that he had not timely requested reconsideration and had failed to submit factual or medical evidence sufficient to establish clear evidence of error.

LEGAL PRECEDENT

Section 8124(b) of the Federal Employees' Compensation Act,¹ concerning a claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary." 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.²

ANALYSIS

The Board finds that appellant's request for an oral hearing was timely. The Office issued a merit decision on October 30, 2002 denying his recurrence of disability claim.

¹ 5 U.S.C § 8101 *et seq.*; § 8124(b)(1).

² *Frederick D. Richardson*, 45 ECAB 454 (1994).

Appellant's request for an oral hearing was stamped received by the Office on November 27, 2002. His request for an oral hearing was received within 30 days of the Office's decision. Consequently, appellant was entitled to a hearing as a matter of right. The case will be remanded to the Office to provide him an oral hearing under section 8124(b) to be followed by an appropriate decision regarding whether appellant sustained a recurrence of disability on September 3, 2002 causally related to his accepted left shoulder condition.

CONCLUSION

The Board finds that the Office abused its discretion under 5 U.S.C. § 8124 in denying appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2005 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further proceedings consistent with this decision.

Issued: November 20, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board