

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL DUEMMEL and U.S. POSTAL SERVICE,
POST OFFICE, Yountville, Calif.

*Docket No. 97-312; Submitted on the Record;
Issued November 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b); and (2) whether the Office abused its discretion in denying appellant's request for reconsideration of its July 18, 1995 decision under 5 U.S.C. § 8128.

The Board has duly reviewed the case record in this appeal and finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

On March 30, 1995 appellant, then a rural mail carrier, filed a claim for an occupational disease (Form CA-2) alleging that she first became aware of her vertigo condition on February 18, 1993. Appellant also alleged that she realized that her vertigo condition was caused or aggravated by her employment on March 20, 1995. Appellant stopped work on February 13, 1995.

By decision dated July 18, 1995, the Office found the evidence of record insufficient to establish that appellant sustained the claimed condition and that the claimed condition was caused by factors of appellant's employment.

On August 23, 1995 appellant, through her representative, requested an oral hearing before an Office representative. By decision dated September 15, 1995, the Office denied appellant's request for an oral hearing as untimely under section 8124 of the Federal Employees' Compensation Act.

In a September 28, 1995 letter, appellant, through her representative, requested reconsideration of the Office's decision. Appellant's representative alleged that the Office's July 18, 1995 decision was postmarked July 24, 1995 and that she received the decision on August 8, 1995. Appellant's representative further alleged that her request for a hearing was faxed to the Office on August 23, 1995, which was 15 days after receipt of the decision, 15 days

before the 30-day time period had lapsed from receipt of the decision and exactly 30 days from the postmark date of the decision. By letter dated January 2, 1996, the Office advised appellant that her request for a hearing had been denied. The Office also advised appellant to review its September 15, 1995 decision.

In a February 29, 1996 letter, appellant, through her representative, stated that she was confused about the Office's decision inasmuch as she had requested a hearing within the 30-day time period and submitted evidence supportive of her claim. By decision dated March 25, 1996, the Office denied appellant's request for an oral hearing as untimely under section 8124 of the Act. The Office further denied appellant's request on the grounds that the issue involved could be equally well resolved by requesting reconsideration from the district office and by submitting evidence not previously considered which established that there was a causal relationship between her condition and factors of her employment.

In a letter dated March 31, 1996, appellant, through her representative, alleged that she timely requested an oral hearing. Appellant's representative alleged that the Office mailed its "[July 18, 1995] decision to the wrong address for [appellant] and we still managed to get the request for hearing faxed to your office, called and made sure that it was there." By letter dated May 23, 1996, the Office advised appellant to exercise her appeal rights.

In a July 15, 1996 letter, appellant requested reconsideration of the Office's decision. In an August 2, 1996 letter, appellant, through her representative, again requested reconsideration of the Office's decision. By decision dated August 15, 1996, the Office denied appellant's request for reconsideration without a merit review of the claim on the grounds that the evidence submitted was cumulative in nature and thus insufficient to warrant a review of the July 18, 1995 decision.

By letter dated September 12, 1996, appellant submitted authorization for representation by counsel. In this letter, appellant's counsel requested that the Office provide the status of appellant's claim. By letter dated October 7, 1996, the Office advised appellant's counsel that appellant's request for reconsideration was denied by decision dated August 15, 1996 and that appellant's case remained in a denial status.

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 Inasmuch as appellant filed her appeal with the Board on October 18, 1996, the only decisions properly before the Board are the Office's March 25, 1996 decision regarding the denial of appellant's request for an oral hearing and an August 15, 1996 decision concerning appellant's request for reconsideration of the Office's July 18, 1995 decision.

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... 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."²

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8124(b)(1).

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.³

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁴

In this case, the record reveals that the Office mailed its July 18, 1995 decision denying appellant's claim to the following address: 6817-B Yount Street, Yountville, California 94599. Previously, in a June 17, 1995 letter, appellant specifically advised the Office that her new address was 1409 Union Street, Alameda, California 94501. Inasmuch as the Office did not mail its July 18, 1995 decision to appellant's correct address, the Board finds that the Office's decision was not properly mailed as of July 18, 1995.⁵ Accordingly, the Board will reverse the Office's March 25, 1996 decision denying appellant's request for an oral hearing as untimely under section 8124(b)(1) of the Act and remand the case for an appropriate hearing by an Office hearing representative.⁶

³ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

⁴ *Henry Moreno*, 39 ECAB 475 (1988).

⁵ 20 C.F.R. § 10.130 provides that "[a] copy of the decision . . . shall be mailed to the claimant's last known address."

⁶ The Board notes that subsequent to her June 17, 1995 letter, appellant advised the Office on October 1, 1995 that her new address was 5529 Tuttle Crossing, Dublin, Ohio 43016. The Office mailed its August 15, 1996 decision to appellant at this address.

The March 25, 1996 decision of the Office of Workers' Compensation Programs is hereby reversed and the case returned to the Office for scheduling of an appropriate hearing.⁷

Dated, Washington, D.C.
November 4, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ In view of the Board's decision on the issue of timeliness of the hearing request, the issue of denial of appellant's request for reconsideration is moot.