

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTHA I. RODRIQUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 98-211; Submitted on the Record;
Issued December 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay.

On January 22, 1997 appellant, then a 39-year-old letter carrier, filed a notice of traumatic injury (Form CA-1) and claim for compensation alleging that, on November 12, 1996, while working light duty, she sustained bruising and swelling to her left foot in the performance of duty. Appellant stated that she was recuperating from foot surgery and had been advised by her treating physician not to walk, but that her supervisor ordered her to deliver half of her route in violation of medical restrictions. The Office accepted the claim for a foot contusion. Appellant was off work from November 26, 1996 to February 18, 1997.

By decision dated April 7, 1997, the Office denied appellant's claim for continuation of pay on the grounds that she failed to provide written notice of her work within 30 days of November 12, 1996.

By letter dated April 18, 1997, appellant requested a review of the written record. Her letter was addressed to the Office's district office and not the Branch of Hearings and Review.

In conjunction with her request for a written review of the record, appellant submitted reports from her treating physician, Dr. Angeles M. Valdez, which were dated April 27, March 6, February 10 and January 13, 1997, in addition to intermittent disability slips prepared by Dr. Valdez between September 1996 and May 1997.

By decision dated June 6, 1997, the Office advised appellant that her "request for reconsideration" was denied on the grounds that the evidence submitted in support of modification was insufficient to warrant a merit review.

The Board finds that this case is not in posture for decision.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), an employee not satisfied with a decision of the Office 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.¹

Section 10.131 of the Office's regulations, implementing section 8124(b)(1) of the Act, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record before a representative of the Director. Thus, a claimant has the option of requesting an oral hearing or a review of the written record within 30 days of the date of the issuance of an Office decision.² The Board has held that the language of section 8124(b)(1) is unequivocal and that a claimant who requests a hearing, or a review of the written record, within 30 days of issuance of a final Office decision is entitled to such hearing as a matter of right.³ The Office procedures further require that the district Office forward any request for a hearing or a review of the written record to the Branch of Hearings and Review for a *de novo* decision.⁴

In the instant case, appellant requested a review of the written record on April 18, 1997. Although appellant did not send her request directly to the Branch of Hearings and Review, the district Office was required under Office procedures to forward that request on her behalf. Because appellant's request for a written review of the record was filed within 30 days of the Office's April 7, 1997 decision, the Board finds that she is entitled to a review of the written record as a matter of right. Furthermore, the Board finds that the Office incorrectly treated appellant's request for a review of the written record as request for reconsideration under section 8128. Therefore, the case is remanded to the Branch of Hearings and Review for consideration and an appropriate decision.⁵

¹ 5 U.S.C. § 8124(b)(1).

² *Gus N. Rodes*, 43 ECAB 268 (1991); *Cora L. Falcon*, 43 ECAB 915 (1992).

³ *John M. Scales*, 42 ECAB 376 (1991).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601, para. 3 (June 1997); see also *Belinda J. Lewis*, 43 ECAB 552 (1992).

⁵ Subsequent to the Office's June 6, 1997 decision, appellant filed another request for reconsideration along with new evidence. The totality of the evidence of record should be considered by the Office's Branch of Hearings and Review prior to issuance of its decision.

The decision of the Office of Workers' Compensation Programs dated June 6, 1997 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
December 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member