

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DARWIN OSIEK and DEPARTMENT OF THE ARMY,  
TOOELE ARMY DEPOT, Tooele, UT

*Docket No. 98-1138; Submitted on the Record;  
Issued February 25, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant was entitled to any additional compensation due to his accepted 100 percent loss of vision in his left eye; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing on his claim by an Office hearing representative on the grounds that it was untimely filed.

On August 15, 1994 appellant, then a 35-year-old mechanic repairer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on that date he was struck by cable on the left side of his head, causing injuries. Appellant also filed a claim for compensation on account of traumatic injury or disease (Form CA-7) on November 15, 1994 claiming a schedule award. On January 17, 1995 the Office accepted appellant's claim for a left optic neuropathy. On May 17, 1995 the Office issued an award of compensation for a 100 percent loss of use of the left eye, which pursuant to section 8107(c)(5) of the Federal Employees' Compensation Act,<sup>1</sup> entitled appellant to 160 weeks of compensation.

In a letter dated October 20, 1997, appellant indicated that he was terminated from his employment due to his inability to obtain a commercial driver's license because of his vision impairment.

On December 8, 1997 in response to a telephone call from appellant, the Office issued a decision holding that appellant was not entitled to any additional benefits. The Office explained that claimants are only entitled to compensation benefits resulting from disability due to the effects of their accepted condition; that the record revealed that appellant experienced a reduction-in-force unrelated to the effects of his injury; that at the time of the employment injury he was employed as a mechanic; that appellant was compensated to the fullest degree under the guidelines of the Act; and the fact that he now could not obtain a commercial driver's license due to his loss of vision in his left eye was irrelevant.

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<sup>1</sup> 5 U.S.C. § 8107(5).

By letter dated and postmarked January 7, 1998, appellant requested an oral hearing before an Office hearing representative and stated that his request was in response to the December 8, 1997 decision.

By decision dated February 4, 1998, the Office denied appellant's request for a hearing, finding that the request for an oral hearing should have been made 30 days after the May 17, 1995 decision. After exercising its discretion, the Office further denied the oral hearing on the grounds that the issue could be addressed through the reconsideration process.

The Board finds that the Office correctly determined that appellant is not entitled to additional compensation due to his accepted 100 percent loss of vision in his left eye.

The schedule award provisions of the Act<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss of the use of the members of the body listed in the schedule.<sup>3</sup> The Office determined that appellant suffered from a loss of 100 percent of the left eye. Pursuant to section 8107(c)(5), the maximum amount of weeks for which appellant is entitled for loss of use of an eye is 160 weeks -- the amount that the Office awarded. Therefore, appellant received the maximum amount of compensation allowable under the applicable regulations and the provisions of the Act. There is no discretion by the Office or by the Board to grant additional scheduled compensation for such a loss.<sup>4</sup> Accordingly, there can be no further award of compensation benefits for appellant's loss of vision in his left eye.

Additionally, appellant has offered no evidence that he was terminated or separated from his employment due to the loss of use of his left eye. Thus, he has not established an entitlement to compensation benefits for loss wages.<sup>5</sup>

The Board also finds that the Office properly denied appellant's request for an oral hearing on his claim before an Office hearing representative on the grounds that such request was untimely filed.

Section 8124(b)(1) of the Act provides:

"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 section 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>6</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> See generally *Donald Mueller*, 32 ECAB 33 (1980).

<sup>5</sup> As used in the Act, the term "disability" means the incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in a loss of wage-earning capacity. *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

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.<sup>7</sup> The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>8</sup> 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.<sup>9</sup>

Because appellant made his January 7, 1998 request for a hearing more than 30 days after the Office's January 17, 1995 decision, he 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 he could pursue his claim through the reconsideration process. As appellant may address the issues in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated February 4, 1998 and December 8, 1997 are hereby affirmed.

Dated, Washington, D.C.  
February 25, 2000

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> 20 C.F.R. § 10.1319(a)(b).

<sup>8</sup> *William E. Seare*, 47 ECAB 663 (1996).

<sup>9</sup> *Id.*