U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL W. NOAKES and DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Three Rivers, TX

Docket No. 00-1720; Submitted on the Record;
Issued April 5, 2001

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On November 7, 1995 appellant, then a 36-year-old safety manager, filed a traumatic injury claim, alleging that on October 30, 1995 he strained the left lower side of his back when he slipped on a sidewalk, which was wet from a sprinkler. Appellant submitted medical disability evidence and a duty status report dated November 24, 1995 from his treating physician, Dr. Douglas Farnsworth, a chiropractor.

By decision dated April 16, 1996, the Office denied appellant's claim, stating that the evidence of record failed to demonstrate a causal relationship between the work incident and the claimed disability.

On August 23, 1999 appellant filed a claim for a recurrence of disability, alleging that, on August 8, 1999, he sustained a recurrence of the October 30, 1995 employment injury.

By letter dated August 24, 1999, appellant requested that the Office reopen his case to provide medical coverage for his treatment. The record does not show that the Office responded to appellant's request or his claim for a recurrence of disability.

By letter dated February 1, 2000, appellant requested an oral hearing before an Office hearing representative.

By decision dated March 22, 2000, the Office's Branch of Hearings and Review denied appellant's request for a hearing, finding that appellant's letter was postmarked February 2, 2000, more than 30 days after the Office issued the April 16, 1996 decision; therefore, appellant's request was untimely. The Branch informed appellant that he could request reconsideration by the Office and submit additional evidence.

The Board finds that the Office properly denied appellant's request for an oral hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant ... 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 10.615 of the Office's federal regulations implementing this section of the Act, provides that a claimant can choose between an oral hearing or a review of the written record.[2] The regulation also provides that in addition to the evidence of record, the employee may submit new evidence to the hearing representative.[3]

Section 10.616(a) of the Office's regulations[4] provides:

> "A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."

The Board has held that 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 that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[5] 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,[6] when the request is made after the 30-day period for requesting a hearing,[7] and when the request is for a second hearing on the same issue.[8]

On appeal, appellant stated that he did not receive the April 16, 1996 decision at his home or his workplace and it was not until he received the Office's March 22, 2000 letter informing him that he could file an appeal with the Board did he learn that his claim had been denied.

In this case, the date on the Office's decision, April 16, 1996, is the date it was issued and therefore the 30-day time period for appellant to file his request for an oral hearing commenced on April 16, 1996. Although appellant claimed he did not receive notice that the decision had

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[1] 5 U.S.C. § 8124(b)(1).

[2] 20 C.F.R. § 10.615.

[3] *Id*.

[4] 20 C.F.R. § 10.616(a).

[5] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[6] *Rudolph Bremen*, 26 ECAB 354, 360 (1975).

[7] *Herbert C. Holly*, 33 ECAB 140, 142 (1981).

[8] *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

been issued until March 22, 2000, the April 16, 1996 decision bears appellant's correct address, "5475 Southern Ranch Road, Apt. 179, San Antonio, TX 78222" which appellant provided in his claim form.[9]

It is presumed under "the mailbox rule" that properly addressed correspondence is mailed in the ordinary course of business unless rebutted. The appearance of the properly addressed decision in the case record, together with the mailing custom or practice of the Office, will raise the presumption that the decision was properly mailed. Appellant has not submitted any evidence to rebut the presumption.[10] It is therefore presumed that the April 16, 1996 decision was properly mailed to appellant's home address.

Since appellant's February 1, 2000 letter requesting an oral hearing by an Office hearing representative was mailed more than 30 days after the issuance of the April 16, 1996 decision, appellant's letter requesting review is untimely. The Office therefore properly denied appellant's request for a hearing.

Inasmuch as appellant's hearing request was untimely, it was within the Office's discretion under the Act whether to grant appellant a hearing. The Office considered the relevant circumstances of appellant's hearing request and denied the request. The Office properly exercised its discretion in denying appellant's request for a hearing.

The March 22, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 5, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[9] The apartment number of appellant's home address in his appeal to the Board differs from the apartment number the Office used but the record did not indicate that appellant informed the Office of any change of address.

[10] *See Clara T. Norga*, 46 ECAB 473, 487 (1995).