

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH A. (CONNOLLY) BEEKS and U.S. POSTAL SERVICE,
POST OFFICE, Anchorage, AK

*Docket No. 99-964; Submitted on the Record;
Issued January 23, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 13, 1998 on the basis that appellant no longer had any disability causally related to her April 2, 1977 employment injury; and (2) whether the Office properly denied appellant's request for a hearing.

On April 2, 1977 appellant, then a 31-year-old timekeeper, sustained an injury to her lower back when she slipped on a polished wet floor while in the performance of duty.¹ She ceased work on the day of her injury and returned to work on November 11, 1977. Appellant ceased working again on November 23, 1977 and has not returned to work. The Office accepted appellant's claim for lumbar strain with radiculopathy and she was placed on the periodic compensation rolls.

On June 18, 1998 the Office advised appellant that it proposed to terminate her wage-loss compensation because the disability resulting from her accepted injury had ceased.

In a letter dated July 14, 1998, appellant noted her disagreement with the proposed termination of compensation. She explained that she continued to suffer from chronic low back syndrome.

By decision dated August 28, 1998, the Office terminated appellant's compensation effective September 13, 1998 on the basis that the evidence of record established that she was no longer disabled as a result of her April 2, 1977 employment injury.

By letter postmarked October 14, 1998, appellant requested a hearing. In a decision dated December 1, 1998, the Office found that she did not submit her request for a hearing

¹ Appellant previously sustained an employment-related back injury on October 23, 1976, which the Office accepted for subluxations of the cervical and dorsal spine. The record further indicates that she contracted poliomyelitis as a child, which resulted in permanent damage to her right lower extremity.

within 30 days of the Office's August 28, 1998 decision and therefore she was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

Dr. Charles J. Kase, a Board-certified orthopedic surgeon, examined appellant on January 28, 1997 and diagnosed chronic low back syndrome without evidence of radiculopathy. He also noted that appellant suffered from residuals from childhood polio.⁴ Dr. Kase explained that appellant's chronic low back syndrome was more probably than not related to her April 2, 1977 employment injury and that the residuals from appellant's polio were unrelated to her chronic low back syndrome. In a supplemental report dated March 4, 1997, he further explained that appellant had no objective findings to support her subjective complaints of back pain. As the record lacks any current objective evidence to support a finding of continuing disability causally related to appellant's April 2, 1977 employment injury, the Office properly terminated appellant's compensation.

The Board also finds that the Office properly denied appellant's request for a hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for an oral hearing must be submitted, in writing, within 30 days of the date of issuance of the decision. A claimant is not entitled to an oral 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.⁵ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁷

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ Appellant had consulted with Dr. Kase regarding her low back condition on two prior occasions in October and November 1996.

⁵ 20 C.F.R. § 10.131(a) and (b).

⁶ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ *Rudolph Bermann*, 26 ECAB 354 (1975).

Appellant's request for a hearing was postmarked October 14, 1998, which is more than 30 days after the Office's August 28, 1998 decision terminating compensation. As such, she is not entitled to an oral hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether she continued to experience residuals from her April 2, 1977 employment injury could equally well be addressed by requesting reconsideration.⁸ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated December 1 and August 28, 1998 are hereby affirmed.

Dated, Washington, DC
January 23, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).