

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERTISE M. JONES and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Palatine, IL

*Docket No. 02-6; Submitted on the Record;
Issued April 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

On November 11, 1997 appellant, then a 51-year-old letter sorting machine (LSM) operator clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she injured her right arm while working as an LSM operator.

By decision dated January 27, 1998, the Office denied appellant's claim, as it found that the evidence was not sufficient to establish that her condition was caused by an employment factor.

By letter dated May 26, 2000, appellant requested a hearing. By decision dated July 9, 2001, the Office denied appellant's request as it was not filed within 30 days after the issuance of a final decision by the Office. The Office also reviewed appellant's request under its discretionary authority and determined that the request was further denied for the reasons that the issue in this case could equally well be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which establishes that the claimed condition was caused by employment factors.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on September 19, 2001, the only decision over which the Board has jurisdiction on this appeal is the July 9, 2001 decision denying her request for a hearing. The Board does not have jurisdiction over the earlier decision on the merits of the claim.²

¹ 20 C.F.R. § 501.3(d)(2).

² See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No. 99-1345, issued November 3, 2000).

The Board finds that the Office properly denied appellant's hearing request as untimely filed.

Section 8124(b) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on her claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.³ 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.⁴ As appellant's May 26, 2000 request for a hearing was dated more than 30 days after the Office's January 27, 1998 decision, appellant was not entitled to a hearing as a matter of right. The Office further considered appellant's request for a hearing and determined that the issue of performance of duty could be equally well resolved through a request for reconsideration. Accordingly, the Board finds that the Office did not abuse its discretion in its denial of appellant's request for a hearing.⁵

The decision of the Office of Workers' Compensation Programs dated July 9, 2001 is affirmed.

Dated, Washington, DC
April 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

³ See 5 U.S.C. § 8124(b).

⁴ See 20 C.F.R. § 10.616(a) (1999); *Charles J. Prudencio*, 41 ECAB 499, 501 (1990).

⁵ The Board rejects appellant's contention that he was not aware of the decision at the time it was issued. The record indicates that the decision was mailed to appellant at his last known address.