

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALPHONSE WEBB and DEPARTMENT OF THE ARMY,  
ANNISTON ARMY DEPOT, Anniston, Ala.

*Docket No. 96-2027; Submitted on the Record;  
Issued June 19, 1998*

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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 requests for a hearing.

On February 22, 1993 appellant, then a 43-year-old carpenter filed a notice of traumatic injury and claim for compensation Form CA-1 alleging that he had sustained a back injury while in the performance of his federal employment duties on February 12, 1993. The Office accepted that appellant had sustained a lumbosacral strain as a result of that employment injury and approved appropriate wage-loss benefit for disability arising out of that injury for the dates April 21 and May 13, 1993. Appellant was terminated effective August 25, 1993 for reasons other than for his compensation claim.

On August 26, 1993 appellant filed a formal claim to wage loss compensation for total disability arising out of his February 12, 1993 employment injury commencing August 26, 1993.

By decision dated January 13, 1994, the Office rejected appellant's claim for wage loss compensation on the grounds that the evidence of record failed to establish that appellant's absence from work on and after August 26, 1993 was in any way causally related to the employment injury of February 12, 1993.

In a letter dated February 16, 1994, appellant, through his attorney, requested a hearing before an Office representative.

By decision dated January 27, 1995, an Office hearing representative, after conducting a hearing, affirmed the denial of appellant's wage loss compensation claim. The Office found that the evidence of record established that appellant was partially disabled and that limited duty was available. The Office further found that appellant was fired for cause and there was no evidence that the employing establishment in administering its personnel policies was erroneous or constituted an abuse of discretion. Thus, the Office found that the termination of appellant's

employment for cause did not constitute a proper basis for a valid claim to compensation under the provisions of Federal Employees' Compensation Act.

In a letter dated February 26, 1995 appellant, through his attorney, requested reconsideration and also stated that he sustained another injury in the scope of his employment on June 7, 1993. Appellant submitted evidence in support of his new allegation.

By decision dated March 22, 1995, the Office found that the evidence submitted in support of the application for review was insufficient to warrant modification of the January 27, 1995 decision. The Office further advised appellant that he should file a new claim for the June 1993 injury.

In a letter dated October 10, 1995, appellant requested a hearing before an Office representative and enclosed additional evidence.

By decision letter dated December 29, 1995, the Office denied appellant's request for a hearing. The Office noted that appellant previously requested and received a hearing from their office and the hearing representative's decision of January 27, 1995 upheld the district office's decision of January 13, 1994. The Office further noted that appellant had previously requested reconsideration under Section 8128<sup>1</sup> and that the District office's reconsideration decision of March 22, 1995 also upheld the prior denial of his claim. The Office denied appellant a second hearing or written review for the reason that the issue involved was resolved as the previous hearing provided a full opportunity for the presentation of evidence and appellant had exercised his right under Section 8128 to submit additional evidence and seek modification of that decision.

In a letter dated March 19, 1996, appellant requested an oral hearing and submitted additional evidence.

By decision letter dated April 9, 1996, the Office denied appellant's request for an oral hearing. The Office found that appellant had previously requested reconsideration, a reconsideration decision was issued on March 22, 1995, and pursuant to Section 8124(b)(1)<sup>2</sup> an oral hearing or a review of the written record can only be done before reconsideration review under Section 8128. The Office further denied appellant's request for the reason that the issue involved could be equally well resolved by requesting reconsideration from the district office and submitting evidence not previously considered.

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

The decisions on appeal before the Board are the December 29, 1995 and the April 19, 1996 decisions denying appellant's request for a hearing. The Board has no jurisdiction to

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<sup>1</sup> 5 U.S.C. § 8128.

<sup>2</sup> 5 U.S.C. § 8124(b)(1).

review any prior decisions because they were issued more than one year before the current appeal was filed on June 18, 1996.<sup>3</sup>

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative states:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... 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>4</sup>

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 the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. 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, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.<sup>5</sup>

In this case, the Office issued its decision denying appellant's claim on January 13, 1994. Appellant requested and received a hearing before an Office representative, who affirmed the denial of his claim by decision dated January 27, 1995. Appellant then filed a reconsideration request on February 26, 1995, which the Office found to be insufficient to warrant modification of the hearing representative's decision on March 22, 1995.

Appellant requested a hearing in an October 10, 1995 letter. Because appellant requested a hearing on the same issue which the Office had previously considered in its January 27 and March 22, 1995 decisions, appellant was not entitled to a hearing under section 8124 as a matter of right. The Office also exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that he was provided a full opportunity to present evidence at both the hearing and in seeking modification of the hearing representative's decision by submitting additional evidence pursuant to Section 8128. Consequently, the Office properly denied appellant's hearing request of October 10, 1995.

Appellant then filed another request for a hearing in a March 19, 1996 letter. Because appellant requested a hearing after he had requested reconsideration under Section 8128(a) on February 26, 1995, he is not entitled to a hearing under section 8124 as a matter of right. The

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<sup>3</sup> 20 C.F.R. § 501.3(d)(2).

<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> *Henry Moreno*, 39 ECAB 475 (1988).

Office also exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that he could have his case further considered on reconsideration by submitting relevant medical evidence. Consequently, the Office properly denied appellant's March 19, 1996 hearing request.

The decisions of the Office of Workers' Compensation Programs dated April 19, 1996 and December 29, 1995 are affirmed.

Dated, Washington, D.C.  
June 19, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member