

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA L. LONSINGER and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, Calif.

*Docket No. 97-943; Submitted on the Record;
Issued July 7, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

The Board finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing under § 8124(b)(1).

Section 8124(b)(1) of the Federal Employees' Compensation Act provides in pertinent part as follows:

“Before review under § 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 issuance of the decision, to a hearing on his claim before a representative of the Secretary.”¹

The Office's procedures implementing this section of the Act are found in the Code of Federal regulations at 20 C.F.R. § 10.131(a). This paragraph, which concerns the preliminary review of a case by an Office hearing representative to determine whether the hearing request is timely and whether the case is in posture for a hearing states in pertinent part as follows:

“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, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. § 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing, or if review of the written record as provided by paragraph (b) of the section has been obtained.”²

¹ 5 U.S.C. § 8124(b)(1)

² 20 C.F.R. § 10.131(a).

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.³ 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 for a hearing,⁴ when the request is made after the 30-day period for requesting a hearing⁵ and when the request is for a second hearing on the same issue.⁶ In these instances the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁷ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁸

In the present case, the Office issued its most recent merit decisions denying appellant's claims on January 12, 1995⁹ and on May 3, 1995.¹⁰ Appellant requested a hearing in a letter dated May 10, 1995.¹¹ Following a prehearing conference on April 10, 1996, appellant agreed to withdraw her hearing request in claim No. 13-1038590 and to pursue her case through the reconsideration process under claim No. 13-0908512. However, thereafter the Office went ahead and considered a request for a hearing in claim No. 13-0908512. A hearing request must be made within 30 days of the issuance of the decision as determined by the postmark of the request.¹² Since appellant did not request a hearing within 30 days of the Office's January 12,

³ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

⁴ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁵ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁶ *Johnny S. Henderson*, *supra* note 3.

⁷ *Id.*; *Rudolph Bermann*, *supra* note 4.

⁸ *See Herbert C. Holley*, *supra* note 5.

⁹ Addressing claim No. 13-0908512 for bilateral carpal tunnel syndrome. This decision modified a November 23, 1994 decision determining that appellant remained entitled to medical benefits for her work-related conditions. The November 23, 1994 decision denied a recurrence of disability claim for total disability commencing September 29, 1994 finding that she failed to establish causal relation. The Board notes that appellant was, at that time, in receipt of a lump sum schedule award in the amount of \$65,169.39 for the period August 22, 1992 through November 28, 1996, such that she would not be entitled to additional compensation for disability during that period. The Board has frequently explained that claimant's are precluded from concurrently receiving compensation for permanent impairment and compensation for wage loss on the theory that these are parallel remedies for the same injury. *Marie J. Born*, 27 ECAB 623 (1976)

¹⁰ Addressing claim No. 13-1038590 for cervical strain. This decision rejected appellant's claim for disability for the period October 1, 1994 through April 28, 1995 finding that causation due to her accepted cervical strain had not been established. The Board again notes that appellant was, at that time, in receipt of a lump sum schedule award in the amount of \$65,169.39 for the period August 22, 1992 through November 28, 1996, such that she would not be entitled to additional compensation for disability during that period. *See supra* note 9.

¹¹ Appellant requested a hearing in case No. 13-1038590.

¹² 20 C.F.R. § 10.131(a).

1995 decision, she was not entitled to a hearing under § 8124 as a matter of right. Further, as appellant had previously requested and received reconsideration under § 8128, she was additionally not entitled to a hearing under § 8124 on that issue as a matter of right.

The Office, in its discretion, considered appellant's hearing request in its October 30, 1996 decision, found that appellant had previously requested and received reconsideration on the issue in question, and denied the request on the basis that appellant could pursue her claim by requesting reconsideration and submitting additional evidence supporting that she had a recurrence of disability commencing September 29, 1994.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.¹³ There is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellant's hearing request.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated October 30, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 7, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹³ *Daniel J. Perea*, 42 ECAB 214 (1990).