

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLORIA ANGLON-REYNOSO and U.S. POSTAL SERVICE,  
CORLISS PARK EASTSIDE UNIT, Providence, RI

*Docket No. 98-2303; Submitted on the Record;  
Issued February 16, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

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

On April 7, 1993 appellant, then a 37-year-old letter carrier, filed a claim for an alleged February 23, 1994 employment incident. She stated that she slipped on ice after she stepped out of her postal vehicle and fell, sustaining a fracture of the pubis. In a May 26, 1993 decision, the Office rejected appellant's claim on the grounds that fact of an injury was not established. In an August 25, 1993 letter, appellant requested reconsideration of the Office's decision. In a November 23, 1993 merit decision, the Office denied appellant's request for modification of its prior decision.

In a March 21, 1996 letter, appellant again requested reconsideration. In an April 5, 1996 decision, the Office denied appellant's request for reconsideration on the grounds that the request was untimely and did not present clear evidence of error in the Office's prior decisions.<sup>1</sup>

In an April 16, 1996 letter, appellant's representative indicated that appellant's claim had been denied and she had subsequently appealed. The representative noted that appellant had not received any response or an appointment for an oral hearing. The Office treated the representative's letter as a request for a hearing before an Office hearing representative. In a June 15, 1998 decision, the Office denied appellant's request for a hearing on the grounds that she had previously requested reconsideration and therefore was not entitled to a hearing before an Office hearing representative as a matter of right. The Office further considered appellant's

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<sup>1</sup> Appellant appealed to the Board. In a December 18, 1996 decision, the Board dismissed appellant's appeal because, in her appeal, she only cited the Office's November 23, 1993 decision, from which the Board concluded that it lacked jurisdiction as appellant had not appealed within one year of a final decision by the Office. (Docket No. 96-1874, Order Dismissing Appeal, issued December 18, 1996).

request and determined that her request could be well addressed by submitting evidence not previously considered and requesting reconsideration.

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

Section 8124(b)(1) of the Federal Employees' Compensation Act<sup>2</sup> provides as follows:

“Before review under section 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 the issuance of the decision, to a hearing on his claim before a representative.”<sup>3</sup>

In this case, appellant requested reconsideration on August 25, 1993 and March 21, 1996. As she had requested reconsideration before requesting a hearing before an Office hearing representative on the same issue, she is not entitled to a hearing as a matter of right.<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 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. In this case, the Office denied appellant's request for a hearing after determining that the issue could be equally well addressed by the submission of new evidence, accompanied by a new request for reconsideration. 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.<sup>5</sup> The Office has not abused its discretion in this case.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> *Mary E. Hite*, 42 ECAB 641 (1991).

<sup>5</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs, dated June 15, 1998, is hereby affirmed.

Dated, Washington, D.C.  
February 16, 2000

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member