

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA F. YOUNG and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Atlanta, GA

*Docket No. 00-2828; Submitted on the Record;
Issued September 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant was totally disabled and unable to perform her limited-duty position on March 7, 1998; (2) whether she was totally disabled due to residuals from her employment injury; (3) whether the Office of Workers' Compensation Programs properly denied appellant's request for right foot surgery; and (4) whether the Office properly denied appellant's request for a hearing.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated September 21, 1999 and finalized October 14, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

By letter dated April 29, 2000, appellant filed a request for a hearing and submitted additional evidence.

By decision dated June 27, 2000, the Office denied appellant's request for another hearing on the grounds that she was not entitled to a second hearing as a matter of right and the issue in the case, a medical issue, could be resolved through a request for reconsideration and the submission of additional evidence.¹

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

¹ The record contains additional evidence which was not before the Office at the time it issued its June 27, 2000 and October 14, 1999 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

Section 8124(b)(1) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "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."²

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 to a hearing,⁴ when the request is made after the 30-day period for requesting a hearing,⁵ and when the request is for a second hearing on the same issue.⁶

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the issue in the case, a medical issue, could be resolved by a request for reconsideration and the submission of additional medical evidence. In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a second hearing which could be found to be an abuse of discretion.

For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

² 5 U.S.C. § 8124(b)(1).

³ *Henry Moreno*, 39 ECAB 475, 482 (1988).

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

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

⁶ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

The June 27, 2000 and October 14, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
September 14, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member