

percent impairment of the lungs.¹ The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On July 13, 2004 appellant filed a claim for compensation on account of disability (Form CA-7) requesting compensation from August 1997 onward. In a decision dated September 17, 2004, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he was disabled due to his accepted pulmonary condition of calcified plaques from asbestos exposure.

On October 8, 2004 appellant requested a review of the written record. In a decision dated February 18, 2005 and finalized March 8, 2005, an Office hearing representative affirmed the September 17, 2004 decision.

On February 3, 2006 appellant requested an oral hearing on the March 8, 2005 hearing representative's decision. In a decision dated March 9, 2006, the Office's Branch of Hearings and Review denied appellant's request for a hearing as he had previously had a review of the written record on the same issue. The Branch of Hearings and Review further considered the request and determined that the issue of entitlement to disability compensation could be equally well addressed through the reconsideration process.

LEGAL PRECEDENT

Section 8124(b) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing, states that: "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 issuance of the decision, to a hearing on his claim before a representative of the Secretary."² 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.³

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."⁴ Section 10.616(a) further provides, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."⁵

¹ *Isaac Pettway*, Docket No. 04-1867 (issued December 3, 2004).

² 5 U.S.C. § 8124(b)(1).

³ *Frederick D. Richardson*, 45 ECAB 454 (1994).

⁴ 20 C.F.R. § 10.615.

⁵ 20 C.F.R. § 10.616(a).

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.⁶ 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.⁷

ANALYSIS

By decision dated September 17, 2004, the Office denied appellant's request for disability compensation beginning August 1997. Appellant requested a review of the written record. In a decision finalized March 8, 2005, an Office hearing representative affirmed the September 17, 2004 decision after finding that the evidence was insufficient to support that appellant was disabled due to his employment-related pulmonary condition. On February 3, 2006 appellant requested an oral hearing on the March 8, 2005 decision.

The Office properly determined that appellant was not entitled to a second hearing under section 8124 as a matter of right. A hearing takes the format of either an oral hearing or a review of the written record.⁸ As appellant received a review of the written record, he was not entitled to a subsequent oral hearing on the same issue. The Board thus finds that the Office properly denied his request for a second hearing as he had already received a hearing, in the form of a review of the written record, before the Office.⁹

The Office also exercised its discretion in further considering appellant's hearing request in its March 9, 2006 decision. It denied the hearing request on the basis that appellant could pursue his claim equally well by requesting reconsideration and submitting additional evidence.

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.¹⁰ There is no evidence in the case record that the Office abused its discretion in refusing to grant appellant's hearing request.

⁶ See *André Thyratron*, 54 ECAB 257 (2002).

⁷ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁸ 20 C.F.R. § 10.615.

⁹ See *André Thyratron*, *supra* note 6.

¹⁰ *Delmont L. Thompson*, 51 ECAB 155 (1999).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 9, 2006 is affirmed.

Issued: January 23, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board