

FACTUAL HISTORY

This case has previously been before the Board. In a June 8, 2005 decision, the Board found that the Office met its burden of proof to terminate appellant's compensation benefits effective March 3, 2004, that the Office did not abuse its discretion in denying her request for a hearing and that appellant failed to meet her burden of proof to establish that she had any disability after March 3, 2004 causally related to her accepted conditions.² The facts of the case are hereby incorporated by reference.

On July 14, 2005 appellant filed a schedule award claim. In a decision dated July 27, 2005, the Office found that she was not entitled to a schedule award. The Office stated that, as her compensation benefits had been terminated because she no longer had residuals of her employment injury, appellant was not entitled to a schedule award. The Office explained appellant's appeal rights and attached the appropriate form.

In a request postmarked August 31, 2005, appellant requested a hearing. By decision dated October 13, 2005, an Office hearing representative denied her request on the grounds that it was untimely filed. The hearing representative further denied the request on the grounds that the issue in the case could be fully addressed by requesting reconsideration with the Office. In a February 23, 2006 letter, the Office again explained that appellant's hearing request was untimely and advised her to follow the appeal rights outlined in the October 13, 2005 decision.

By letter dated May 1, 2006, the Office informed appellant's attorney that on March 3, 2004 appellant's compensation benefits were terminated on the grounds that she had no residuals of the previously accepted conditions and that no appeals were pending. On June 21, 2006 appellant, through counsel, noted that a schedule award claim had been filed and submitted a medical report from Dr. Dee Ann Bialecki-Haase, Board-certified in family medicine. Counsel stated, "We would like you to review this impairment rating and then send it to the [Office medical adviser] for review." In a letter dated July 21, 2006, the Office informed counsel:

"I am writing in response to your letter requesting that this case be sent to the [Office medical adviser] for review for a schedule award.... A letter was sent to you on May 1, 2006 advising you that [as] medical benefits were terminated in this case on March 3, 2004 [appellant] is not entitled to compensation benefits in this case."

On July 27, 2006 appellant, through counsel, requesting a hearing regarding the July 21, 2006 decision. By letter dated September 6, 2006, an Office hearing representative advised that the case was not in posture for a hearing because an adverse decision had not been issued by the Office on the issue upon which the appeal was requested.

LEGAL PRECEDENT

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral

² Docket No. 05-110 (issued June 8, 2005).

hearing or a review of the written record must be submitted in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.³ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,⁴ 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.⁵ 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.⁶

ANALYSIS

The Board notes that, upon examining the case record, the record does not contain a final decision dated September 6, 2006. The record contains an informational letter dated September 6, 2006 in which an Office hearing representative advised appellant that the case was not in posture for a hearing because an adverse decision had not been issued by the Office on the issue upon which the appeal was requested.

As required by 20 C.F.R. § 501.3(d)(2), the Board only has jurisdiction over final decisions of the Office that are issued within one year of the filing of the appeal.⁷ Therefore, the only decision before the Board is the October 13, 2005 decision denying appellant's request for a hearing of the July 27, 2005 decision. The Office denied this request on the grounds that it was untimely filed. Appellant's request for a hearing was postmarked August 31, 2005. As this request had not been made within 30 days of the July 27, 2005 Office decision, the Office properly found that she was not entitled to a hearing as a matter of right.

The Office also has the discretionary power to grant a request for a hearing when a claimant is not entitled to such as a matter of right. In the October 13, 2005 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue in this case could be addressed through a reconsideration application. The Board has held that, 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 deduction from established facts.⁸ In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of

³ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁶ *Claudio Vazquez*, *supra* note 3.

⁷ The Board only has jurisdiction over final decisions of the Office. 20 C.F.R. § 501.2(c). Any appeal of an Office decision must be filed within one year of the issuance of such decision. 20 C.F.R. § 501.3(d)(2).

⁸ *Id.*; see *Daniel J. Perea*, 42 ECAB 214 (1990).

appellant's request for a hearing which could be found to be an abuse of discretion. The Office, therefore, properly denied her request.

The Board, however, notes that the record also contains a June 21, 2006 letter in which appellant's attorney requested a review of the schedule award decision and submitted medical evidence. The Board finds that this represents a timely request for reconsideration of the July 27, 2005 decision. In a response to that request dated July 21, 2006, the Office informed appellant's attorney that appellant was not entitled to a schedule award and did not issue a formal decision on appellant's reconsideration request.⁹ As appellant timely filed a petition for reconsideration with the Office of the July 27, 2005 decision, the Office should issue an appropriate decision in this regard.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing. The record, however, contains a timely reconsideration request dated June 21, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 13, 2005 be affirmed.

Issued: May 9, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁹ In denying a schedule award, the Office noted that the medical evidence established that appellant no longer had residuals or disability related to her accepted conditions. However, appellant's compensation was not terminated based on her refusal of suitable work under 5 U.S.C. § 8106(c). She is not barred from receiving schedule award compensation for any period after the termination decision. *See* 20 C.F.R. § 10.517; *Stephen R. Lubin*, 43 ECAB 564 (1992); *M.M.*, Docket No. 06-1728 (issued April 5, 2007).