U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNA E. DREYER and DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Falls Church, Va.

Docket No. 97-2606; Submitted on the Record;
Issued May 20, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, BRADLEY T. KNOTT

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

On May 18, 1993 appellant, then a 50-year-old information management assistant, filed a notice of occupational disease alleging that she suffered bilateral carpal tunnel syndrome as a result of her federal employment. The Office approved the claim for bilateral carpal tunnel syndrome on October 19, 1993 and awarded disability compensation. On November 9, 1993 the Office approved surgery for bilateral carpal tunnel syndrome which appellant underwent. On July 14, 1995 appellant requested a schedule award.

By decision dated December 19, 1995, the Office approved a schedule award for a 10 percent permanent loss of use of the right upper extremity and for a 10 percent permanent loss of the use of the left upper extremity.

In a letter dated February 21, 1996, appellant wrote to the Office's Branch of Hearings and Review indicating that she had completed forms in order to continue receiving compensation. The forms appellant completed updated the Office on appellant's current employment, volunteer work, dependents, federal benefits or payment and third-party settlements. Appellant stated that her treating physician, Dr. Jimmy A. Chow, submitted updated medical reports, but that the Office told her that her "year is up and nothing can be done." Appellant stated that she understood that she could receive continued compensation by showing that her disability prevents her from performing her previous work and by applying for jobs posted in her office. She indicated that her right hand had a 10 percent impairment after surgery and that now the impairment was 20 percent.

In a letter received by the Office on May 16, 1997, appellant wrote to the Office's Branch of Hearings and Review. Appellant indicated that she sent a letter on February 21, 1996 and that

she would like a response. She inquired, "[i]f someone could please at least let me know what steps I need to take or if there is nothing I can do."

By decision dated June 11, 1997, the Office exercised its discretion and denied appellant's May 16, 1997 request for a hearing because it was not made within 30 days of the December 19, 1995 decision of the Office awarding a schedule award.

The only decision before the Board on this appeal is the decision of the Office dated June 11, 1997 in which the Office exercised its discretion and denied appellant's request for a hearing. Since more than one year has elapsed from the date of issuance of the Office's December 19, 1995 decision and the date of the filing of appeal on July 25, 1997, the Board lacks jurisdiction to review that decision.[1]

The Board finds that the Office properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "[b]efore 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] 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]

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.[4] 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,[5] when the request is made after the 30-day period for requesting a hearing,[6] and when the request is for a second hearing on the same issue.[7]

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated December 19, 1995; therefore, appellant was

[1] 20 C.F.R. § 501(3)(d).

[2] 5 U.S.C. § 8124(b)(1).

[3] *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[4] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[5] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[6] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[7] *John S. Henderson*, 34 ECAB 216, 219 (1982).

not entitled to a hearing as a matter of right. Appellant first wrote the Office's Branch of Hearings and Review expressing dissatisfaction with her claim on February 21, 1996. Appellant wrote the Branch of Hearings and Review again on May 16, 1997. Because these correspondences with the Branch of Hearings and Review were not made within 30 days of the Office's December 19, 1995 decision, the Office correctly stated that appellant was not entitled to a hearing as a matter of right.

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 June 11, 1997 decision, properly exercised its discretion by stating that it considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the case could be resolved by submitting additional evidence to establish that an injury was sustained as alleged. 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 appellant's hearing request 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.

The decision of the Office of Workers' Compensation Programs dated June 11, 1997 is affirmed.

Dated, Washington, D.C.
May 20, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[8] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).