

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT D. ABEL and DEPARTMENT OF THE NAVY,
AMMUNITION DEPOT, Crane, IN

*Docket No. 99-1685; Submitted on the Record;
Issued March 5, 2001*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied his request for an oral hearing on his claim by an Office hearing representative.

On November 9, 1965 appellant, then a 33-year-old ordnance worker, filed a claim for benefits, alleging that he strained his back while lifting a container. The Office accepted his claim for back strain, protruded disc at L5, left side and degenerative disc disease. Appellant was placed on temporary total disability for intermittent periods, for which the Office paid him appropriate compensation. He stopped work on November 20, 1970 and has not returned to work since that date. The Office placed him on the periodic rolls.

By letter dated August 9, 1996, the Office advised appellant that it had scheduled him for a second opinion examination for August 21, 1996. The Office informed him that, pursuant to section 8123(d),¹ if he refused to submit to or obstructed the examination, his right to compensation would be suspended until the refusal or obstruction stopped and that compensation was not payable during the period of refusal or obstruction.

On August 19, 1996 the certified letter was returned to the Office, as appellant had refused to sign for it; appellant informed the Office by telephone that he would not attend the examination and that he could not be forced to attend. He requested, during this conversation, that the Office forward the examination letter to his home via regular mail, which the Office did on August 20, 1996. The Office submitted another letter to appellant, dated August 29, 1996, in which it informed him that he had 15 additional days to provide a written statement to the Office justifying his refusal to attend the appointment. He submitted a September 11, 1996 letter to the Office which failed to indicate his reasons why he would not be attending the examination.

¹ 5 U.S.C. § 8123(d).

By decision dated September 23, 1996, the Office suspended appellant's compensation on the grounds that he refused to appear at a medical examination ordered pursuant to section 8123.

On May 12, 1997 the Office reinstated appellant's compensation benefits, as appellant indicated his willingness to cooperate with the Office and undergo a medical examination on that date.

By decision dated January 21, 1998, the Office advised appellant that his compensation would be reduced to zero effective January 21, 1998 because he had refused to cooperate with rehabilitation efforts when the weight of the medical evidence showed that he was no longer totally disabled for work due to effects of his November 8, 1965 employment injury.

By letter postmarked January 12, 1999, appellant requested an oral hearing.

In a decision dated February 22, 1999, the Office found that appellant's request for an oral hearing was untimely filed. The Office noted that his request was postmarked January 12, 1999, which was more than 30 days after the issuance of the Office's January 21, 1998 decision and that he was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

The Board finds that the Office properly denied appellant's request for an oral hearing on his claim before an Office hearing representative.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.² A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.³ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁴ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁵

In the present case, because appellant's January 12, 1999 request for a hearing was postmarked more than 30 days after the Office's January 21, 1998 decision, he is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that he could pursue his claim through the reconsideration process. As he may address the issue in this case by submitting to the Office new and relevant evidence

² 5 U.S.C § 8124(b)(1).

³ 20 C.F.R. § 10.131(a)(b).

⁴ *William E. Seare*, 47 ECAB 663 (1996).

⁵ *Id.*

with a request for reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.⁶

The February 22, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁶ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).