

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA D. NEWTON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Jacksonville, FL

*Docket No. 02-699; Submitted on the Record;
Issued July 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation; and (2) whether the Office abused its discretion in denying appellant's request for a hearing.

On June 21, 1995 appellant, then a 40-year-old taxpayer contact service representative, sustained an employment-related contusion of the right foot and strain of the right lower leg when an elevator she was exiting dropped. She underwent several authorized surgical procedures and was terminated for cause by the employing establishment, effective July 18, 1997. On June 26, 2000 appellant was granted a schedule award for a 13 percent impairment of the right leg, for a total of 37.40 weeks of compensation, to run from April 13 to December 31, 2000. In July 2000, she was placed on the periodic rolls and received wage-loss compensation dating back to the date of her termination.

The Office continued to develop the claim and by letter dated April 4, 2001, informed appellant that it proposed to terminate her compensation based on the opinion of Dr. Hiram A. Carrasquillo, appellant's treating Board-certified orthopedic surgeon, who advised that she could perform the position she had when terminated. By decision dated May 8, 2001, the Office finalized the termination effective May 20, 2001. In a letter postmarked June 8, 2001, appellant requested a hearing. By decision dated November 9, 2001, the Office denied appellant's hearing request on the grounds that it was untimely filed. The instant appeal follows.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without

establishing that the disability has ceased or that it was no longer related to the employment.¹ Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.²

The relevant medical evidence in the instant case includes a March 17, 2001 report in which, Dr. Carrasquillo noted that he had reviewed a February 23, 2001 letter in which the Office outlined appellant's position description of contact representative and the attached form that provided the physical requirements of the position. He then advised that the job description was within appellant's capabilities. The Board, therefore, finds that, as appellant was capable of performing the position, she had no employment-related disability on or after May 20, 2001 and the Office met its burden of proof to terminate her compensation benefits effective that date.

The Board also finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

Here, the Office denied appellant's request for a hearing on the grounds that it was untimely filed. In its November 9, 2001 decision, the Office stated that appellant was not, as a matter of right, entitled to a hearing since her request postmarked June 8, 2001 had not been made within 30 days of its May 8, 2001 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue in the instant case could be addressed through a reconsideration application.

The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,³ 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 In the present case, appellant's request for a hearing was postmarked June 8, 2001 and was thus made more than 30 days after the date of issuance of the Office's prior decision dated May 8, 2001. The Office was, therefore, correct in stating in its November 9, 2001 decision 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 request when a claimant is not entitled to a hearing as a matter of right, the Office, in its November 9, 2001 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue of whether the Office properly terminated appellant's compensation benefits could be addressed through a reconsideration application.

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

² See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Henry Moreno*, 39 ECAB 475 (1988).

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.⁵ 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.

The decisions of the Office of Workers' Compensation Programs dated November 9 and May 8, 2001 are hereby affirmed.

Dated, Washington, DC
July 24, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).