

FACTUAL HISTORY

On December 3, 1999 appellant, then a 44-year-old mail handler, injured her left upper extremity in an incident involving an all purpose container. The Office accepted her claim for left forearm distal radius fracture and authorized surgery for an open reduction with internal fixation. Appellant received appropriate wage-loss compensation.

By decision dated March 5, 2004, the Office terminated wage-loss compensation and medical benefits based on evidence that appellant's condition had resolved with no remaining residuals or employment-related disability. Appellant requested an oral hearing which was held on October 27, 2004. The Branch of Hearings & Review affirmed the decision on March 4, 2005. Afterwards, appellant sought reconsideration on two occasions. On June 22, 2005 the Office denied appellant's March 4, 2005 request without reaching the merits of the claim. Appellant filed another request on February 22, 2006 along with additional medical evidence. In a decision dated April 10, 2006, the Office affirmed the two previous merit decisions dated March 5, 2004 and March 4, 2005.

On March 3, 2007, appellant filed Form CA-7 (claim for compensation) requesting a schedule award. However, she did not provide any additional medical evidence in support of her claim for a schedule award.

In a letter to appellant's counsel dated April 2, 2007, the Office acknowledged receipt of the recent claim for a schedule award and explained that no further action would be taken given that appellant's claim was in a "denied status." It noted that appellant's compensation and medical benefits had been terminated because she no longer had residuals of her accepted condition and, therefore, no entitlement to a schedule award.²

Appellant's counsel wrote to the Branch of Hearings & Review on April 10, 2007 requesting an oral hearing regarding the "decision of April 2, 2007."

By decision dated May 10, 2007, the Branch of Hearings & Review denied appellant's request for a hearing. The Office hearing representative noted that an earlier hearing had been conducted on the issue of continuing residuals and a decision was issued March 4, 2005. The hearing representative further explained that, because appellant had already received one hearing, she was not entitled to a second hearing as a matter of right. A discretionary hearing was also denied on the grounds that appellant could appropriately address her concerns by requesting reconsideration.

LEGAL PRECEDENT

A claimant who has previously sought reconsideration under section 8128(a) of the Act is not, as a matter of right, entitled to a subsequent hearing before the Office's Branch of Hearings and Review.³ The Office, however, may exercise its discretion to either grant or deny a hearing

² The April 2, 2007 informational letter from the Office was not accompanied by any appeal rights.

³ 5 U.S.C. §§ 8124(b)(1), 8128(a) (2000); 20 C.F.R. § 10.616(a).

following reconsideration.⁴ Similarly, the Office may exercise its discretion to conduct a hearing when the request is for a second hearing on the same issue.⁵

ANALYSIS

As a preliminary matter, the Board notes that counsel's April 10, 2007 request for an oral hearing specifically referenced an Office "decision of April 2, 2007." However, the Office did not issue a final decision on April 2, 2007. The only Office document bearing an April 2, 2007 date is an informational letter regarding the schedule award claim (Form CA-7) appellant filed March 3, 2007. As this was not a final decision, no appeal rights attached and, therefore, an oral hearing before the Branch of Hearings & Review was not an available option.⁶ Because the record did not include an April 2, 2007 final decision, the Branch of Hearings & Review interpreted counsel's April 10, 2007 letter as request for a second hearing regarding the Office's March 5, 2004 termination of compensation and medical benefits.

The Office's March 5, 2004 decision was reviewed by the Branch of Hearings & Review and affirmed March 4, 2005. Following the March 4, 2005 decision, appellant twice requested reconsideration. Her latest request warranted merit review and the Office denied modification in a decision dated April 10, 2006. There is no provision in the Federal Employees' Compensation Act or regulations entitling a claimant to more than one hearing. If a claimant has received a hearing on a particular issue and the hearing representative affirms the Office's decision, a claimant is not entitled to another hearing on that same issue even when she proffers new evidence. The determination of whether to grant or deny a request for a second hearing is left to the sound discretion of the Office.⁷ There is also no statutory or regulatory provision specifically authorizing a hearing following reconsideration by the Office.⁸ Again, whether a hearing is to occur under these circumstances is a discretionary matter for the Office to decide.⁹

Appellant was not entitled to a hearing as a matter of right because she had previously received a hearing on the termination issue and had previously requested reconsideration on two occasions. As to whether a discretionary hearing was appropriate, the Board finds no error with the decision to deny appellant a second hearing. An abuse of discretion is generally shown through proof of manifest error or a clearly unreasonable exercise of judgment, neither of which are present here.¹⁰ The Branch of Hearings & Review properly exercised its discretion in

⁴ *Hubert Jones Jr.*, 57 ECAB__ (Docket No. 05-603, issued March 10, 2006); *André Thyratron*, 54 ECAB 257, 261 (2002).

⁵ *André Thyratron*, *supra* note 4; *Steven A. Anderson*, 53 ECAB 367, 369-70 (2002).

⁶ See 20 C.F.R. § 10.616(a). The Office's April 2, 2007 correspondence is also not subject to appeal before the Board. Only final decisions of the Office may be appealed to the Board. 20 C.F.R. §§ 10.625, 501.2(c), 501.3(a).

⁷ *André Thyratron*, *supra* note 4.

⁸ The regulations regarding how to obtain a hearing specifies that a claimant must not have previously submitted a reconsideration request on the same decision. 20 C.F.R. § 10.616(a).

⁹ *Steven A. Anderson*, *supra* note 5.

¹⁰ *Delmont L. Thompson*, 51 ECAB 155, 157-58 (1999).

determining that appellant's case could appropriately be addressed by requesting reconsideration and submitting evidence not previously considered.

CONCLUSION

The Office properly denied appellant's April 10, 2007 request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 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