



## **FACTUAL HISTORY**

On February 28, 2003 appellant filed a traumatic injury claim alleging that he injured his left ankle at work on that date. He did not stop work at that time. In an April 18, 2003 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty on February 28, 2003.

In a May 18, 2006 letter, appellant stated that he wanted "a hearing or reconsideration" in connection with the denial of his claimed ankle injury. In a February 2, 2007 letter received by the Office on February 5, 2007, appellant stated that he was "requesting a hearing in front of an administration judge."

In a March 16, 2007 decision, the Office denied appellant's request for a hearing before an Office hearing representative. It determined that appellant's hearing request was untimely as it was filed more than three years after the Office's last merit decision dated April 18, 2003. The Office then exercised its discretion and determined that appellant's claim could equally well be addressed by submitting new evidence establishing that he sustained an employment-related injury.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before 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."<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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,<sup>5</sup> when the request is made after the 30-day period for requesting a hearing,<sup>6</sup> and when the request

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>4</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>5</sup> *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

<sup>6</sup> *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

is for a second hearing on the same issue.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

Appellant's February 2007 hearing request was made more than 30 days after the issuance of the Office's April 18, 2003 merit decision. Therefore, appellant is not entitled to a hearing as a matter of right. The Office properly found in its March 16, 2007 decision that appellant was not entitled to a hearing as a matter of right because his hearing request was not made within 30 days of the Office's April 18, 2003 decision.<sup>9</sup>

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. In its March 16, 2007 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the issue could be resolved by submitting additional evidence to establish that his injury was causally related to employment factors.<sup>10</sup> The evidence of record does not establish that the Office abused its discretion in denying appellant's hearing request.

### CONCLUSION

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

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<sup>7</sup> *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>9</sup> Appellant submitted a May 18, 2006 letter in which he stated that he wanted "a hearing or reconsideration" in connection with the denial of his claimed ankle injury, but he did not unequivocally file a request for a hearing until the Office received his February 2, 2007 letter on February 5, 2007. Even if the May 18, 2006 letter were considered to constitute a hearing request, appellant would not have filed a hearing request in a timely manner.

<sup>10</sup> *See Steven A. Anderson*, 53 ECAB 367 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' March 16, 2007 decision is affirmed.

Issued: January 29, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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