

This is the second appeal in the present case. In a September 30, 2004 decision, the Board affirmed the Office's decisions dated October 1, 2002 and January 22, 2003 finding that appellant had failed to establish that her seizure disorder was caused by the December 4, 1984

employment incident and that the Office properly denied her request for reconsideration.<sup>1</sup> The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.<sup>2</sup>

On July 16, 2005 appellant requested reconsideration.

In a decision dated November 2, 2005, the Office denied modification of the October 1, 2002 and January 22, 2003 decisions.

On July 7, 2008 appellant requested reconsideration.

In a decision dated August 12, 2008, the Office denied appellant's reconsideration request finding that the request was not timely filed and did not present clear evidence of error.

On August 26, 2008 appellant again requested reconsideration.

On January 24 and 25, 2009 appellant, through her representative, requested an oral hearing with regard to the April 2, 1999 and April 2, 2002 Office decisions.

In a decision dated February 6, 2009, the Office denied appellant's request for an oral hearing. It found that the matter had previously been reviewed and that she was not entitled to an oral hearing as a matter of right. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the Office and submitting evidence not previously considered.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "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>3</sup> Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>4</sup> The Office's regulations provide that the request must be sent within 30 days of the date of the decision, for which a hearing is sought and also that "the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."<sup>5</sup>

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<sup>1</sup> Docket No. 03-1123 (issued September 30, 2004).

<sup>2</sup> The Office accepted appellant's claim for contusion to the face or scalp from blunt trauma.

<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616(a).

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Act,<sup>6</sup> 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>7</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>8</sup>

### **ANALYSIS**

Appellant's requests for an oral hearing dated January 24 and 25, 2009 were properly denied as the evidence shows that she had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a) of the Act.<sup>9</sup> The Board finds that her request for an oral hearing was made after the Office issued its November 2, 2005 decision on her request for reconsideration made pursuant to 5 U.S.C. § 8128. Appellant was not entitled to an oral hearing before an Office hearing representative as a matter of right as she had previously requested reconsideration.

In its February 6, 2009 decision, the Office acknowledged that, although there was no entitlement to an oral hearing, it could allow such an oral hearing within its discretion. It properly exercised its discretion by indicating that it had also denied appellant's hearing request on the basis that the case could be equally well addressed by requesting reconsideration and submitting additional medical evidence. There is no evidence of an abuse of discretion in this case.<sup>10</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's requests for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).<sup>11</sup>

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>8</sup> *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

<sup>9</sup> See *Peggy R. Lee*, 46 ECAB 527 (1995) (where the Board found that appellant's request for an oral hearing was made after the Office issued its decision on his request for reconsideration made pursuant to 5 U.S.C. § 8128 and therefore appellant was not entitled to an oral hearing before an Office hearing representative as a matter of right).

<sup>10</sup> See *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>11</sup> The Board notes that appellant did not appeal the Office decision's dated August 12 and November 21, 2008 and therefore these decisions are not before the Board at this time.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2009 decision of the Office of Workers' Compensation Programs affirmed.

Issued: December 16, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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