

In a decision dated June 10, 2003, the Office terminated appellant's entitlement to compensation for wage-loss and schedule awards effective June 14, 2003 on the grounds that she refused an offer of suitable work. Following an oral hearing on February 26, 2004, an Office hearing representative affirmed the termination in a decision dated May 17, 2004.

On September 8, 2008 appellant filed a claim for a schedule award. On September 24, 2008 the Office advised her that she was no longer entitled to compensation under a schedule award as a result of the June 10, 2003 decision finding that she had refused an offer of suitable work. It returned the claim and informed appellant that it would take no further action.

On October 13, 2008 appellant referenced the Office's September 24, 2008 letter and requested an oral hearing before an Office hearing representative.

In a decision dated January 12, 2009, the Office denied appellant's request for an oral hearing. It found that, because appellant had already received a hearing on the issue, she was not entitled to a second hearing as a matter of right. The Office nonetheless considered her request but denied a discretionary hearing because she could address the issue through the reconsideration process.

On appeal, appellant contends that she did not refuse to go to work; her doctor would not release her to return to work. She stated: "My legs were unstable and that is why they would not give me my schedule award." Appellant submitted a December 23, 2008 report from her doctor.

LEGAL PRECEDENT

Before reconsideration, a claimant for compensation not satisfied with a decision of the Office is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before an Office hearing representative.¹ A claimant is not entitled to an oral hearing, however, if she has already received a hearing on the same issue or set of issues.²

The Board has held that the Office, in its broad discretionary authority, has the power to hold hearings in certain circumstances where no legal provision was made for hearings, and has held that the Office must exercise its discretion in such cases.³ The Office shall determine whether a discretionary hearing should be granted and, if not, shall so advise the claimant with reasons.⁴ The Office's procedures, which require the Office to exercise its discretion to grant or

¹ 5 U.S.C. § 8124(b)(1).

² *Charles D. Watson*, 35 ECAB 1068 (1984) (if a claimant has received a hearing on an issue or set of issues and the hearing representative affirms the Office's decision, the claimant is not entitled to another hearing on that issue or set of issues even if he submits new evidence; he may receive a second hearing only if the Office, in its discretion, grants him a second hearing).

³ *Mary B. Moss*, 40 ECAB 640 (1989) (untimely request); *Shirley A. Jackson*, 39 ECAB 540 (1988) (hearing request made after request for reconsideration); *Johnny S. Henderson*, 34 ECAB 216 (1982) (request for a second hearing); *Rudolph Bermann*, 26 ECAB 354 (1975) (injury occurring prior to effective date of the statutory amendments providing right to hearing).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4.b(3) (June 1997).

deny a hearing when no legal provision is made for such hearings, are a proper interpretation of the Act and of Board precedent.⁵

A decision of the Office shall contain findings of fact and a statement of reasons. It is accompanied by information about the claimant's appeal rights, which may include a right to a hearing, a reconsideration or a review by the Board.⁶

ANALYSIS

The only decision the Board may review on this appeal is the Office's January 12, 2009 nonmerit decision denying appellant's October 13, 2008 request for an oral hearing before an Office hearing representative. The Board has no jurisdiction to review the Office's June 10, 2003 decision terminating her entitlement to compensation for wage loss and schedule awards or the hearing representative's May 17, 2004 decision affirming the termination.

The Office's September 24, 2008 letter to appellant is not a decision. It did not adjudicate; it contained no findings of fact and statement of reasons and was accompanied by no appeal rights. The letter was merely informational, explaining to appellant the reason the Office was taking no further action on her September 8, 2008 claim for a schedule award. The Office advised her that its previous decisions had already decided her entitlement to a schedule award.

Appellant's October 13, 2008 request for an oral hearing, therefore, cannot be regarded as an appeal of the Office's September 24, 2008 correspondence. It must, instead, be regarded as a request for a second hearing on the Office's June 10, 2003 decision terminating her entitlement to compensation for wage loss and schedule awards effective June 14, 2003.

Appellant had 30 days to request a hearing following the Office's June 10, 2003 decision. She exercised that appeal right and testified at an oral hearing on February 26, 2004. Because appellant had this hearing on the issues of suitable work and termination, the Office properly found that she is not entitled as a matter of right to a second hearing on the same issue or set of issues.

The Office, nonetheless, had discretion to grant appellant's request. But it determined that a discretionary hearing should not be granted and so advised appellant with reasons. It explained that she could pursue the issue through the separate appeal right of reconsideration.

The Board has often held that the denial of a hearing on these grounds represents a proper exercise of the Office's discretionary authority.⁷ Appellant may, indeed, pursue the issue of her entitlement to a schedule award after June 14, 2003 by requesting reconsideration from the district Office and submitting evidence addressing the Office's June 10, 2003 decision.

⁵ *Jeff Micono*, 39 ECAB 617 (1988); *Henry Moreno*, 39 ECAB 475 (1988).

⁶ 20 C.F.R. § 10.126.

⁷ *E.g.*, *Robert Lombardo*, 40 ECAB 1038 (1989).

Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's request for an oral hearing and properly advised her with reasons. The Board will affirm the Office's January 12, 2009 decision.

Appellant's arguments on appeal, and the medical report she submitted, relate to the merits of the Office's June 10, 2003 decision, which the Board has no jurisdiction to review. They are not relevant to the issue now before the Board, namely, whether it properly denied her October 13, 2008 request for an oral hearing.

CONCLUSION

The Board finds that the Office properly denied appellant's October 13, 2008 request for an oral hearing before an Office hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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