

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. McKENZIE and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, Ohio

*Docket No. 96-863; Submitted on the Record;
Issued April 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

The Board has duly reviewed the case record in the present case and finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The only decision on appeal before the Board is the Office's December 13, 1995 decision, denying appellant's request for a hearing. The Board has no jurisdiction to review the October 19, 1994 merit decision of the Office as it was issued more than one year before the January 22, 1996 filing of the current appeal.¹

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."² 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 with in the requisite 30 days.³

¹ See 20 C.F.R. § 501.3(d)(2). By decision dated October 19, 1994, the Office denied appellant's claim on the grounds he did not establish that he had total disability on or after July 10, 1994 due to his November 2, 1988 employment injury.

² 5 U.S.C. § 8124(b)(1).

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

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.⁴ 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,⁵ when the request is made after the 30-day period for requesting a hearing,⁶ and when the request is for a second hearing on the same issue.⁷

By letter dated November 18, 1995, appellant requested a hearing in connection with the Office's October 19, 1994 decision. Appellant's November 18, 1995 hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated October 19, 1994 and, thus, appellant was not entitled to a hearing as a matter of right. Hence, the Office was correct in stating in its December 13, 1995 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 decision.

While 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, the Office, in its December 13, 1995 decision, 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 in the case could be resolved by submitting, in connection with a reconsideration request, additional medical evidence to establish that his claimed disability was causally related to factors of employment. 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.⁸ 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.

⁴ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁵ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁶ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁷ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

⁸ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated December 13, 1995 is affirmed.

Dated, Washington, D.C.
April 9, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member