

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ADRIAN E. SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, Jacksonville, Fla.

*Docket No. 96-172; Submitted on the Record;  
Issued February 9, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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 appeal 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 June 9, 1995 decision, denying appellant's request for a hearing. The Board has no jurisdiction to review the Office's January 1989 merit decision, as it was issued more than one year before the October 12, 1995 filing of the current appeal.<sup>1</sup> In January 1989 the Office issued a decision, in which it granted appellant a schedule award for a 40 percent permanent impairment of his left lower extremity.<sup>2</sup> The award ran for 115.2 weeks from November 28, 1988 to February 12, 1991.

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>3</sup> As section 8124(b)(1) is unequivocal in setting

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<sup>1</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> The Office had accepted that appellant sustained an employment-related permanent aggravation of the degenerative arthritis of his right hip.

<sup>3</sup> 5 U.S.C. § 8124(b)(1).

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>4</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>5</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>6</sup> when the request is made after the 30-day period for requesting a hearing,<sup>7</sup> and when the request is for a second hearing on the same issue.<sup>8</sup>

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision, issued in January 1989 and thus appellant was not entitled to a hearing as a matter of right.<sup>9</sup> Appellant requested a hearing before an Office representative in a letter dated August 8, 1994. Hence, the Office was correct in stating in its June 9, 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 January 1989 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 June 9, 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 could be resolved by submitting additional medical evidence to establish entitlement to a greater schedule award. 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>10</sup> 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.

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<sup>4</sup> *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>5</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>6</sup> *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

<sup>7</sup> *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>8</sup> *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>9</sup> On appeal appellant questioned whether the "last payment" of his schedule award constituted a "final decision" for purposes of tolling the 30-day period for making a hearing request. The Office's January 1989 decision is the only final decision of record regarding the merits of appellant's schedule award claim.

<sup>10</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.<sup>11</sup>

The decision of the Office of Workers' Compensation Programs dated June 9, 1995 is affirmed.

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

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> On appeal appellant requested that the Board arrange reimbursement for his purchase of shoe lifts. However, the Board has no jurisdiction over this matter and appellant may wish to contact the Office in this regard; *see* 20 C.F.R. § 501.2(c).