

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALMEDIA D. FREEMAN and U.S. POSTAL SERVICE,
SOUTHERN SUBURBAN PROCESSING & DISTRIBUTION CENTER,
Chicago, Ill.

*Docket No. 97-215; Submitted on the Record;
Issued September 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion.

The facts of this case indicate that on November 11, 1993 appellant, then a 33-year-old mail processor, sustained employment-related cervical strain and contusions of the neck, back, foot and shoulder. She received appropriate continuation of pay and compensation, and, by decision dated June 1, 1995, the Office found that appellant had no employment-related disability after January 3, 1995 causally related to the November 11, 1993 employment injury. By letter postmarked July 6, 1995, appellant requested a hearing. By decision dated February 9, 1996, an Office hearing representative denied appellant's request on the grounds that it was not timely filed. Appellant requested reconsideration of this decision and, in a July 18, 1996 decision, the Office again denied appellant's request on the grounds that her hearing request was not timely filed. The instant appeal follows.

The only decisions before the Board in this appeal are the Office's decisions dated February 9 and July 18, 1996 in which appellant's requests for a hearing were denied. Since more than one year had elapsed between the date of the Office's most recent merit decision dated June 1, 1995 and the filing of appellant's appeal on September 30, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.¹

In the present case, the Office denied appellant's request for a hearing on the grounds that it was untimely. In its decisions dated February 9 and July 18, 1996, the Office stated that

¹ 20 C.F.R. § 501.3(d)(2).

appellant was not, as a matter of right, entitled to a hearing since her request had not been made within 30 days of its June 1, 1995 decision. In both decisions, the Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue of whether she continued to have residuals of her employment injury could be addressed through a reconsideration application.

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.² In the present case, appellant's request for a hearing postmarked July 6, 1995 was made more than 30 days after the date of issuance of the Office's prior decision dated June 1, 1995 and, thus, appellant was not entitled to a hearing as a matter of right. Hence, the Office was correct in stating in its February 9 and July 18, 1996 decisions that appellant was not entitled to a hearing as a matter of right because her request was not made within 30 days of the Office's June 1, 1995 decision.

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, in its February 9 and July 18, 1996 decisions, 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 request on the basis that the issue of whether her condition was causally related to the employment injury could be addressed through a reconsideration application. 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.³ 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.

² *Henry Moreno*, 39 ECAB 475, 482 (1988).

³ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decisions of the Office of Workers' Compensation Programs dated July 18 and February 9, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 1, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member