

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALFREDO S. MATA and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Oakland, Calif.

*Docket No. 97-1242; Submitted on the Record;  
Issued February 11, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative.

On June 23, 1992 appellant, then a 41-year-old letter carrier, filed a claim for compensation for stress and mental and emotional strain. Appellant contended that he was under stress because the employing establishment had pressured him to change his limited-duty assignment to a position that exceeded the physical restrictions set by his physician. The employing establishment contended that the position offered to appellant was within the most recent physical restrictions established by appellant's physician. In an August 31, 1992 decision, the Office rejected appellant's claim on the grounds that no factor which can be considered in the performance of duty was introduced. Appellant requested a hearing before an Office hearing representative which was conducted on March 24, 1993. In a May 10, 1993 decision, the Office hearing representative found that appellant had not established an error by the employing establishment in changing his limited duty because the evidence showed the position was within his work restrictions. The hearing representative further found that appellant had not submitted sufficient evidence to positively show that his supervisor made disparaging remarks to him. She therefore affirmed the Office's August 31, 1992 decision.

In an October 30, 1996 letter, appellant again requested an oral argument before the Office. In a January 30, 1997 decision, the Office found that a previous oral argument had been held in appellant's case. The Office therefore found that appellant was not entitled, as a matter of law to another hearing after he had received one previously. The Office exercised its discretion on whether to grant another hearing and concluded that the issue could equally be addressed by appellant requesting reconsideration. It therefore denied appellant's request for a hearing.

The Board finds that the Office did not abuse its discretion in denying appellant's request for a second hearing. The Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this

discretionary authority in deciding whether to grant a hearing. 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, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.<sup>1</sup>

In this case, appellant, three years after the Office hearing representative's decision, requested a second hearing on the same issue. The Office reviewed appellant's request and indicated that he could request reconsideration and submitted further evidence in support of his request for a review of his case. 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 deductions from known facts.<sup>2</sup> There is no evidence in this case that the Office abused its discretion.

The decision of the Office of Workers' Compensation Programs, dated January 30, 1997, is hereby affirmed.

Dated, Washington, D.C.  
February 11, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>1</sup> *Henry Moreno*, 39 ECAB 475 (1988).

<sup>2</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).