

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM SHUMPTER, SR. and NATIONAL ARCHIVES & RECORDS
ADMINISTRATION, NATIONAL PERSONNEL RECORDS CENTER, St. Louis, Mo.

*Docket No. 97-1735; Submitted on the Record;
Issued January 6, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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.

By decision dated March 11, 1997, the Office denied appellant's request for an oral hearing as untimely. The Office stated that additional evidence on the issue of fact of injury could be submitted and fully considered accompanying a request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹

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 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 to

¹ 5 U.S.C. § 8124(b).

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.²

In the present case, the Office issued a December 12, 1995 decision denying appellant's claim for a June 23, 1995 lower back injury on the grounds that fact of injury was not established. Appellant did not request a hearing until he submitted a letter dated February 5, 1997, more than 30 days after the issuance of the Office's December 12, 1995 decision.

Appellant's February 5, 1997 hearing request was made more than 30 days after the date of issuance of the Office's December 12, 1995 decision, hence, the Office was correct in finding in its March 11, 1997 decision that appellant was not entitled to a hearing as a matter of right. The Office also exercised its discretion and further considered the request for review, but concluded that appellant could pursue his claim by requesting reconsideration along with the submission of medical evidence. The Office properly exercised its discretionary powers in denying appellant's request for a hearing.³

The decision of the Office of Workers' Compensation Programs dated March 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 6, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² *Henry Moreno*, 39 ECAB 475 (1988).

³ *Ella M. Garner*, 36 ECAB 238 (1948).