

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLARK E. RODEKUHR and U.S. POSTAL SERVICE,  
POST OFFICE, Mankato, Minn.

*Docket No. 97-834; Submitted on the Record;  
Issued March 10, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established a recurrence of disability on or after January 5, 1990 causally related to his accepted November 6, 1989 employment injury;<sup>1</sup> and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 on his claim that his back condition is causally related to factors of his employment.<sup>2</sup>

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated and made final on July 1, 1996 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board also finds that the Office properly denied appellant's request for a hearing under section 8124 based on his occupational claim.

Appellant filed a notice of occupational disease and claim for compensation (Form CA-2) on June 22, 1990 alleging that the wearing of his lumbar vertebrae is due to his lifting at work when he strained the lumbar area of his back. The Office denied his claim by decision dated July 28, 1993 on the basis that the evidence failed to establish that his claimed condition was causally related to his accepted injury or any employment factors.

Appellant requested a hearing and an office hearing representative, by decision dated June 3, 1994 affirmed the July 28, 1993 decision and rescinded the Office's March 13, 1991 acceptance of myoligamentous injury of the lumbar spine. Appellant requested reconsideration which was denied by the Office on February 10, 1995 on the basis that it raised no legal arguments nor presented any new or relevant evidence. Appellant requested a hearing in a letter

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<sup>1</sup> Appellant's claim for a recurrence of disability was assigned the number A10-388888.

<sup>2</sup> Appellant's claim for an occupational disease due to his employment factors included his accepted lumbar injury was assigned claim number A10-0395035.

dated March 6, 1995. In a June 7, 1995 letter, the Office advised that a formal hearing and decision had been issued on his case and instructed him to look at his appeal rights.

In an undated letter received August 13, 1996, appellant requested a hearing on both his claims together (Numbers A10-395035 and A10-388888).<sup>3</sup>

By letter decision dated October 30, 1996, the Office advised appellant that his request for an oral hearing on his claim number A10-0395035 was denied as he had previously requested reconsideration and was not entitled as a matter of right to a hearing.

By decision dated October 30, 1996, the Office denied appellant's hearing request. The Office stated that appellant was not entitled to a hearing as a matter of right since he had previously requested reconsideration. The Office exercised its discretion to conduct a limited review of the case and indicated that appellant's request was also denied on the basis that the issue of loss of wage-earning capacity could be addressed through a reconsideration application.

Section 8124(b)(1) of the Federal Employees' Compensation 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>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> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>9</sup>

In the present case, appellant's August 13, 1996 hearing request was made after his February 10, 1995 request for reconsideration in connection with his claim and, thus, the Office

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<sup>3</sup> Appellant filed a claim for a recurrence of disability on or after January 5, 1990 causally related to his accepted November 6, 1989 employment injury. The Office denied appellant's claim on April 27, 1995. (A 96-100, 116-120) Appellant requested a hearing and the hearings representative affirmed the Office's decision on July 1, 1996.

<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<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> *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

was correct in stating in its October 30, 1996 decision that appellant was not entitled to a hearing as a matter of right because he made his hearing request after he had requested reconsideration.

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 October 30, 1996 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 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.<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.

For these reasons, the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124 on his claim for an occupational disease (claim number A10-0395035).

The decisions of the Office of Workers' Compensation Programs dated October 30 and July 1, 1996 are affirmed.

Dated, Washington, D.C.  
March 10, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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