

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE L. PATTERSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION DOMICILIARY, White City, Oreg.

*Docket No. 97-1126; Submitted on the Record;
Issued March 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

This case has been on appeal previously.¹ In a December 14, 1995 decision, the Board found that appellant had not met her burden of proof in establishing that her cervical condition was causally related to factors of her employment, particularly the need to hold a telephone to her ear with her shoulder while taking information. The Board concluded that the medical evidence submitted by appellant was either equivocal, speculative or unrationalized and therefore insufficient to meet her burden of proof.

In an October 13, 1996 letter, appellant requested an appeal from the Board's December 14, 1995 decision. She submitted a decision from an administrative law judge of the Office of Personnel Management who found that appellant was entitled to disability retirement. The Office referred appellant's request to the Branch of Hearings and Review. In a December 2, 1996 decision, the Office denied appellant's request for a hearing on the grounds that the decision of the Board was final and the Office had no jurisdiction to review the December 14, 1995 decision of the Board, which was the most recent decision of record. The Office further reviewed appellant's request for a hearing under its discretionary authority and denied the request on the grounds that her case could be addressed by requesting reconsideration from the Office and submitted evidence not previously considered which established that her condition was causally related to her employment.

¹ Docket No. 94-889 (issued December 14, 1995). The history of the case is contained in the prior decision and is incorporated by reference.

The Board finds that the Office properly denied appellant's request for a hearing.

Under section 8124(b),² a claimant can request a hearing within 30 days of a decision by the Office. The statutory right to a hearing follows an initial decision of the Office. However, hearings under section 8124 apply only to decisions of the Office, not decisions of the Board. Following the Board's December 14, 1995 decision, the most recent decision then of record, there was no final decision of the Office left unreviewed over which the Branch of Hearings and Review could assume jurisdiction.³

As noted in *Eileen A. Nelson*,⁴ 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.⁵ However, there is no jurisdictional basis for the exercise of its discretionary authority when appellant seeks review of a Board decision, not a final decision of the Office. Therefore, the Office properly apprised appellant that it did not have jurisdiction to review the Board's December 14, 1995 decision and that she could request reconsideration by the Office under section 8128(a).

² 5 U.S.C. § 8124(b).

³ See *Eileen A. Nelson*, 46 ECAB 377 (1994).

⁴ *Id.*

⁵ *Henry Moreno*, 39 ECAB 475 (1988).

The decision of the Office of Workers' Compensation Programs, dated December 2, 1996, is hereby affirmed.

Dated, Washington, D.C.
March 15, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member