

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON L. NANNIE and DEPARTMENT OF THE NAVY,  
NAVAL AIR STATION, Jacksonville, Fla.

*Docket No. 97-2053; Submitted on the Record;  
Issued March 23, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
A. PETER KANJORSKI

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.

The Board finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

Section 8124(b)(1) of the 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>1</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>2</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>3</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>4</sup>

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<sup>1</sup> 5 U.S.C. § 8124(b)(1).

<sup>2</sup> *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>3</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>4</sup> *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

when the request is made after the 30-day period for requesting a hearing,<sup>5</sup> and when the request is for a second hearing on the same issue.<sup>6</sup>

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order<sup>7</sup> on September 6, 1996 in which it set aside the May 23, 1994 decision of the Office and remanded the case to the Office for further proceedings. The Board determined that the Office improperly denied appellant's request for a hearing under section 8124 of the Act. The Board found the Office had properly determined that appellant's April 14, 1994 hearing request was untimely in that it was not made within 30 days of the Office's August 6, 1990 merit decision.<sup>8</sup> The Board noted, however, that the Office improperly exercised its discretion to either grant or deny appellant's hearing request because it applied an improper standard for exercising such discretion by indicating that appellant had to demonstrate clear evidence of error in the Office's August 6, 1990 decision. The Board remanded the case to the Office for application of the proper standard in evaluating appellant's hearing request. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand, the Office reevaluated appellant's hearing request per the Board's decision and, by decision dated April 21, 1997, it denied appellant's hearing request. In its April 21, 1997 decision, the Office properly determined that appellant's April 14, 1994 hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated August 6, 1990 and, thus, appellant was not entitled to a hearing as a matter of right. Hence, the Office was correct in stating in its April 21, 1997 decision that appellant was not entitled to a hearing as a matter of right because her April 14, 1994 hearing request was not made within 30 days of the Office's August 6, 1990 decision.

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 April 21, 1997 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 was medical and could be resolved by submitting additional medical evidence to establish that her condition or disability continued to be due to factors of employment.<sup>9</sup> The Board has held that as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally

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<sup>5</sup> *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>6</sup> *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>7</sup> Docket No. 94-2365.

<sup>8</sup> By decision dated August 6, 1990, the Office terminated appellant's compensation effective July 29, 1990 on the grounds that the weight of the medical evidence established that she did not have disability due to her December 14, 1984 employment injury after that date. The only decision on appeal before the Board is the Office's April 21, 1997 decision denying appellant's request for a hearing. The Board has no jurisdiction to review the August 6, 1990 merit decision as it was issued more than one year before the June 9, 1997 filing of the current appeal; *see* 20 C.F.R. § 501.3(d)(2).

<sup>9</sup> The Office indicated that appellant's oral testimony at a hearing would not constitute medical evidence.

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 section 8124 of the Act.

The decision of the Office of Workers' Compensation Programs dated April 21, 1997 is affirmed.

Dated, Washington, D.C.  
March 23, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member

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