

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MEI L. WANG and U.S. POSTAL SERVICE,
POST OFFICE, North Houston, Tex.

*Docket No. 97-2380; Submitted on the Record;
Issued May 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, 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 under 5 U.S.C. § 8124.

The Board finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

The only decision on appeal before the Board is the Office's February 27, 1997 decision, denying appellant's request for a hearing. The Board has no jurisdiction to review the last merit decision, dated March 6, 1996, as it was issued more than one year before the May 21, 1997 filing of the current appeal.¹ By decision dated March 6, 1996, the Office denied modification of its prior decisions on the grounds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after May 28, 1993 due to her September 21, 1992 employment injury, a skull contusion and postconcussion syndrome.

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."²

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

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8124(b)(1).

authority in deciding whether to grant a hearing.³ 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,⁴ when the request is made after the 30-day period for requesting a hearing,⁵ and when the request is for a second hearing on the same issue.⁶ 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.⁷

In the present case, appellant's December 1996 hearing request was made after she had requested reconsideration in connection with her claim and, thus, appellant was not entitled to a hearing as a matter of right. In February 1996 and several prior occasions, appellant had requested reconsideration of the Office's decisions regarding her claim. Hence, the Office was correct in stating in its February 27, 1997 decision, that appellant was not entitled to a hearing as a matter of right because she made her hearing request after she 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 February 27, 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 case could be resolved by requesting reconsideration and submitting additional evidence to establish that her claimed recurrence of disability was causally related to factors of employment. 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.⁸ 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.

³ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁴ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁵ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁶ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

⁷ *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

⁸ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated February 27, 1997 is affirmed.

Dated, Washington, D.C.
May 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member