

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LESLIE H. HALL and DEPARTMENT OF THE ARMY, HOUSING  
DIVISION, Garmisch-Partenkirchen, Germany

*Docket No. 98-896; Submitted on the Record;  
Issued November 16, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant's request for a hearing was timely.

On February 20, 1992 appellant, then a 57-year-old housing manager, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he suffered an injury to his back when he slipped and fell from a moving truck while unloading a refrigerator for employee housing on December 17, 1991. On March 10, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for a back strain.

On June 21, 1995 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a). Appellant alleged that, since the accident, he had not had one day without pain, and that over the past three years the pain had increased and interfered with daily life. Appellant submitted medical evidence supportive of his claim.

By decision dated June 5, 1996, the Office denied the claim as it found that the medical evidence failed to demonstrate that the claimed recurrence of disability was causally related to the December 17, 1991 employment injury.

In a letter dated September 26, 1997, postmarked September 29, 1997 and received by the Office on October 16, 1997, appellant requested an oral hearing before an Office hearing representative.<sup>1</sup>

On December 9, 1997 the Office issued a decision wherein it denied appellant's request, noting that the request was not made within 30 days of the June 5, 1996 decision and, therefore, appellant was not entitled to an oral hearing as a matter of right. The Office also noted that it

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<sup>1</sup> On August 26, 1997 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) claiming lost wages for the period commencing April 1, 1996. As the Office has not adjudicated this claim, it is not before the Board on this appeal; *see* 20 C.F.R. § 501.2(c).

exercised its discretion in further denying the request for a hearing as the issue could be addressed on reconsideration.

The Board finds that the Office properly determined that appellant's request for a hearing before an Office hearing representative was untimely.

The Federal Employees' Compensation Act<sup>2</sup> is unequivocal that a claimant not satisfied with a decision of the Office has a right, upon timely request, to a hearing before a representative of the Office.<sup>3</sup> The statutory right to a hearing pursuant to section 8124(b)(1) follows an initial decision of the Office.<sup>4</sup> Because subsection (b)(1) is unequivocal on the time limitation for requesting a hearing, a claimant is not entitled to such hearing as a matter of right unless his or her request is made within the requisite 30 days.<sup>5</sup>

In this case, appellant requested an oral hearing before an Office hearing representative by a September 26, 1997 letter, which was postmarked on September 29, 1997. Appellant made his request beyond 30 days from the date the Office issued its June 5, 1996 decision. Since appellant did not request a hearing within 30 days of the June 5, 1996 Office decision, he was not entitled to a hearing under 5 U.S.C. § 8124 as a matter of right.

Nevertheless, even when the hearing request is not timely, the Office has the discretion to grant a hearing and must exercise that discretion.<sup>6</sup> Here, the Office informed appellant in its December 9, 1997 decision that it had considered the timeliness matter in relation to the issue involved and denied appellant's hearing request on the basis that it could be fully considered through a request for reconsideration. The Board has held that abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logical and probable deductions from established facts.<sup>7</sup>

In this case, nothing in the record indicates that the Office committed any act in denying appellant's hearing request that could be found to be an abuse of discretion. The Office advised

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8124(b); *Joe Brewer*, 48 ECAB \_\_\_\_ (Docket No. 95-603), issued March 21, 1997); *Coral Falcon*, 43 ECAB 915, 917 (1992).

<sup>4</sup> *Eileen A. Nelson*, 46 ECAB 377 (1994); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10(b) (March 1993).

<sup>5</sup> *William F. Osborne*, 46 ECAB 198, 202 (1994).

<sup>6</sup> *Frederick D. Richardson*, 45 ECAB 700-01 (1992).

<sup>7</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

appellant that she could request reconsideration and submit additional medical evidence. Finally, appellant offered no argument to justify further discretionary review by the Office.<sup>8</sup>

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

The decision of the Office of Workers' Compensation Programs dated December 9, 1997 is hereby affirmed.

Dated, Washington, D.C.  
November 16, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> Cf. *Brian R. Leonard*, 43 ECAB 255, 258 (1992) (finding that the Office abused its discretion by failing to consider appellant's explanation regarding the untimely filing of his hearing request.)