

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT N. THOMAS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

*Docket No. 98-1874; Submitted on the Record;
Issued November 22, 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' Branch of Hearings and Review properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

This is the second appeal of this case. By decision dated August 20, 1997,¹ the Board found that appellant had established that an incident occurred at the time, place and in the manner alleged, but that appellant had failed to establish that he sustained an employment-related injury on October 25, 1993. On March 27, 1998 appellant requested a hearing before an Office hearing representative. By decision dated April 27, 1998, the Office's Branch of Hearings and Review denied appellant's request for hearing on the grounds that it had no jurisdiction to review a decision of the Board.²

The Board finds that the Office properly denied appellant's request for a hearing pursuant to 5 U.S.C. § 8124(b).

¹ Docket No. 95-614 (issued August 20, 1997).

² This decision further noted that the Office's Branch of Hearings and Review had exercised its discretion and had determined that the issue in the case could be equally well addressed with a request for reconsideration by the Office. The Board notes that the Office's Branch of Hearings and Review improperly exercised its discretion in this regard. The Branch of Hearings and Review had no discretionary authority to grant a hearing in this case and should have instead found that this case was not in posture for hearing. The Office's exercise of "discretion" in this case was however harmless error. *Kenneth E. Legg*, (Docket No. 97-1256, issued December 14, 1998), petition for correction granted May 28, 1999.

The statutory right to a hearing under section 8124(b)(1)³ follows an initial final decision of the Office.⁴ Section 8124 of the Federal Employees' Compensation Act sets forth the appellate jurisdiction of the Office's Branch of Hearings and Review in holding hearings under the Act in relevant part as follows:

“(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against the payment of compensation under this subchapter....

“(b)(1) Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary....”

The Act thus provides the Office with original jurisdiction in the processing of compensation claims, and section 8124(a) specifically provides the Office with the duty and authority to issue an initial decision on an employee's claim for compensation. Once an initial decision is made in a compensation case, appellate rights arise by which the employee may seek further review of his claim: The right to a hearing before the Office (section 8124(b)(1)), the right to reconsideration before the Office (section 8128(a)) or an appeal to the Board (section 8149).

In the present case, following issuance of the Office's initial decision dated October 31, 1994, appellant exercised his appellate rights by requesting an appeal to the Board. The Board reviewed the case and issued its decision on August 20, 1997. On March 27, 1998 appellant requested a hearing before the Office's Branch of Hearings and Review. As the last decision in this case was the Board's August 20, 1997 decision, appellant was requesting that the Office's Branch of Hearings and Review grant a hearing to review the Board's decision, not the initial decision issued by the Office on October 31, 1994.

The Board has clarified that claimants do not have the right under section 8124(b)(1) of the Act to request hearings in the absence of a final Office decision, and has further held that the Office does not have the discretionary authority to grant a request for hearing immediately following a Board decision. The Board explained in *Eileen A. Nelson*,⁵ that the Branch may not assume jurisdiction in the claims process absent a final adverse decision by the Director. Following the Board's review of an Office decision, there is no final decision of the Office left unreviewed over which the Office's Branch of Hearings and Review can assume jurisdiction to exercise its discretionary appellate authority.⁶

³ 5 U.S.C. § 8124(b)(1).

⁴ 5 U.S.C. § 8124(a)(1).

⁵ 46 ECAB 377 (1994).

⁶ *Eileen A. Nelson*, *supra* note 5.

Following the Board's August 20, 1997 decision, there was no final decision of the Office left unreviewed over which the Office's Branch of Hearings and Review could assume jurisdiction to exercise its discretionary appellate authority. The Office, therefore, properly denied appellant's request for a hearing on April 27, 1998.

The decision of the Office of Worker's Compensation Programs dated April 27, 1998 is hereby affirmed.

Dated, Washington, D.C.
November 22, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member