

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARAH LEWIS and DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, Phoenix, AZ

*Docket No. 98-1957; Oral Argument Held May 6, 1999;
Issued November 29, 1999*

Appearances: *Elizabeth Punchios*, for appellant; *Sheldon G. Turley*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing.

On April 27, 1993 appellant, then a 58-year-old food service worker, filed a claim for compensation alleging that on March 30, 1993 she sustained an injury while in the performance of duty.

By decision dated July 13, 1993, the Office denied appellant's claim on the grounds that the evidence of record failed to establish a causal relationship between appellant's condition and her employment. Appellant filed several petitions for reconsideration which the Office subsequently denied. On May 7, 1994 appellant, through her representative, filed a request for an oral hearing which the Office, on June 15, 1994, denied on the grounds that she had previously requested reconsideration pursuant to section 8128(a) of the Federal Employees' Compensation Act.¹ The Office noted that while appellant was not entitled to a hearing as a matter of right, it had considered the matter in relation to the issue involved and, under its discretionary authority, denied the request as appellant could pursue her claim further by requesting reconsideration and submitting rationalized medical evidence in support of her claim.

On October 5, 1994 appellant, through her representative, filed an appeal to the Board. In a decision dated March 21, 1997,² the Board affirmed the Office's denial of compensation benefits on the grounds that appellant failed to establish that her condition was caused by her

¹ 5 U.S.C. § 8128(a).

² Docket Number 95-448.

federal employment. The Board also found that the record contained no evidence that the Office abused its discretion in denying appellant her request for an oral hearing.

On April 14, 1997 appellant, through her representative, filed a request for an oral hearing before the Office on the Board's March 21, 1997 decision, affirming the Office's denial of benefits and finding that the Office did not abuse its discretion in denying appellant her request for an oral hearing.³ On May 23, 1997 the Office denied appellant's request for an oral hearing on the grounds that the Board had issued a final decision on the claim and that the Office did not have jurisdiction to review final decisions of the Board. The Office advised appellant of her right to file an appeal before the Board if she disagreed with its decision.

On February 24, 1998 appellant, through her representative, again requested a hearing on the Board's March 21, 1997 decision. On March 19, 1998 the Office denied appellant's request noting that the Board had previously issued a decision in her case on March 21, 1997. The Office advised appellant of her right to appeal its decision to the Board.

Appellant, through her representative, then filed the instant appeal requesting an oral hearing with the Board in a letter date stamped received June 8, 1998.⁴

The only decision before the Board is the Office's March 19, 1998 decision denying appellant's request for a hearing. As more than one year has elapsed since the date of the last merit decision issued on February 4, 1994, to the date of appellant's appeal to the Board on June 8, 1998, the Board lacks jurisdiction to review that decision.⁵

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

The statutory right to a hearing under section 8124(b)(1) follows an initial decision of the Office.⁶ Section 8124, which sets forth the appellate jurisdiction of the Office's Branch of Hearings and Review in holding hearings under the Federal Employees' Compensation Act,⁷ provides:

“(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

³ In her request for an oral hearing, appellant's representative referred only to the evidence underlying appellant's claim for compensation benefits and did not address the issue of the Board's affirmance of the Office's denial of appellant's request for an oral hearing.

⁴ Appellant's representative stated in the appeal that she was “still requesting an oral hearing for [appellant].”

⁵ 20 C.F.R. § 501.3(d).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10(b) (March 1997).

⁷ 5 U.S.C. § 8124.

issuance of the decision, to a hearing on his claim before a representative of the Secretary....”

It is clear that the Act provides the Office with original jurisdiction in the processing of compensation claims,⁸ 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.⁹ Once an initial decision is made in a compensation case, appellate rights arise by which the employee may seek further review of his or her 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).¹⁰ The request for a hearing before an Office hearing representative or for review of the written record should be directed to the Office’s Branch of Hearings and Review and address the issues adjudicated in the contested Office decision.¹¹ Requests for reconsideration under section 8128(a) should be directed to the local district Office which has jurisdiction of the case and present new evidence relevant to the claim or an arguable case for error.¹² Appeal requests to the Board are to be directed to the Board’s office in Washington, D.C.¹³

With regard to the present appeal, following the initial Office decision in her claim dated July 13, 1995 appellant was properly apprised of her appeal rights. Thereafter, appellant, through her representative, made numerous requests for reconsiderations under section 8128(a) resulting in the most recent merit decision dated February 4, 1994. Appellant, having exercised her appellate remedies under section 8128(a), no longer had an entitlement to a hearing before the Office as a matter of right. In this respect, the record reflects that the Office properly advised appellant of her limited appellate rights following the subsequent compensation orders issued under section 8128(a).¹⁴ In turn, following the Board’s March 21, 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. Therefore, the Office properly apprised appellant on March 19, 1998 that her request for a hearing was denied.

⁸ See 20 C.F.R. § 10.130.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Review Process*, Chapter 2.1600.2(a) (June 1997).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10 (March 1997).

¹¹ See 20 C.F.R. § 10.131 and Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601 (September 1995).

¹² See 20 C.F.R. § 10.138 and Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602 (May 1996).

¹³ An appeal must be taken within one year of the Office’s decision and is limited to a review of the evidence in the case record which was before the Office at the time of its final decision; see 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

¹⁴ The Board notes that the Office, in its April 13, 1994 nonmerit decision, advised appellant of her right to appeal to the Board. However, the Office subsequently sent *via* facsimile transmission on April 26, 1994 a copy of appeal rights including a right to a hearing to R. Salmi /Taylor Associates.

The March 19, 1998 decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review is affirmed.

Dated, Washington, D.C.
November 29, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member