U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNIE V. RIVERA and DEPARTMENT OF THE AIR FORCE, ANDERSEN AIR FORCE BASE, GU

Docket No. 99-1887; Submitted on the Record;
Issued August 24, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

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.

In July 1997, appellant, then a 56-year-old painter, filed a claim alleging that he sustained a skin condition of his right hand due to exposure to chemicals at work.[1] By decision dated February 11, 1998, the Office denied appellant's claim on the grounds that he did not submit sufficient evidence to establish the fact of injury as alleged. By decision dated June 24, 1998, the Office denied appellant's request for a hearing in connection with its February 11, 1998 decision.

The only decision on appeal before the Board is the Office's June 24, 1998 decision denying appellant's request for a hearing. The Board has no jurisdiction to review the February 11, 1998 merit decision as it was issued more than one year before the May 3, 1999 filing of the current appeal.[2]

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

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[1] The file number of the present claim is A13-1145512. Appellant also filed claims relating to back (A13-1145454) and bronchial conditions (A13-1145396).

[2] *See* 20 C.F.R. § 501.3(d)(2).

claim before a representative of the Secretary."[3] 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.[4]

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.[5] 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,[6] when the request is made after the 30-day period for requesting a hearing,[7] and when the request is for a second hearing on the same issue.[8]

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated February 11, 1998 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing before an Office hearing representative in a letter dated April 21, 1998 and postmarked April 23, 1998.[9] Hence, the Office was correct in stating in its June 24, 1998 decision that appellant was not entitled to a hearing as a matter of right because his April 1998 hearing request was not made within 30 days of the Office's February 11, 1998 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 June 24, 1998 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 his case could be addressed by submitting additional evidence and requesting reconsideration. 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.[10] In the present case, the evidence of record does not indicate that the Office committed any act in

[3] 5 U.S.C. § 8124(b)(1).

[4] *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[5] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[6] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[7] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[8] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[9] In his April 21, 1998 letter, apellant indicated that he had sent a letter to the Office, dated March 5, 1998, in which he requested a hearing. The record does not establish that appellant made such a hearing request in a timely manner. Appellant submitted additional evidence after the Office's last decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

[10] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

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 June 24, 1998 is affirmed.[11]

Dated, Washington, D.C.
August 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

[11] On appeal to the Board, appellant indicated that he wished to appeal a July 17, 1999 Office decision. The record does not contain such an Office decision.