

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ABE SEIDMAN and DEPARTMENT OF DEFENSE, DEFENSE CONTRACT
ADMINISTRATION SERVICES, New York, NY

*Docket No. 98-2392; Submitted on the Record;
Issued February 9, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's requests for a hearing under section 8124 of the Federal Employees' Compensation Act.

The Board finds that the Office properly denied appellant's requests for a hearing under section 8124 of the Act.

On September 2, 1976 appellant, then a 55-year-old quality assurance specialist, sustained an employment-related ligamentous derangement of his left thumb base. By decision dated January 25, 1996, the Office granted appellant a schedule award for a seven percent permanent impairment of his left thumb.¹ By letter dated July 22, 1996, appellant requested a hearing before an Office hearing representative in connection with the Office's January 25, 1996 decision.² By decision dated August 7, 1996, the Office denied appellant's hearing request. By letter dated March 25, 1997, appellant again requested a hearing before an Office hearing representative³ and, by decision dated November 25, 1997, the Office denied appellant's hearing request. By letters dated March 25 and May 6, 1998, appellant again requested a hearing before

¹ Appellant had claimed that he sustained residuals of his September 2, 1976 employment injury after March 1989. By decision dated January 4, 1995, the Office denied appellant's claim on the grounds that he had not submitted sufficient medical evidence in support thereof. By decision dated September 13, 1995, the Office remanded the case for further development of the medical evidence.

² Appellant claimed that he had more than a seven percent permanent impairment of his left thumb.

³ The record also contains a September 11, 1997 letter in which appellant requested reconsideration of his claim, but appellant later clarified that he wished to withdraw his request for reconsideration and proceed with his hearing request.

an Office hearing representative and, by decision dated May 26, 1998, the Office denied appellant's hearing request.⁴

The only decisions on appeal before the Board are the Office's November 25, 1997 and May 26, 1998 decisions denying appellant's request for a hearing. The Board has no jurisdiction to review the January 25, 1996 merit decision as it was issued more than one year before the August 7, 1998 filing of the current appeal.⁵

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 claim before a representative of the Secretary."⁶ 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.⁷

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.⁸ 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,⁹ when the request is made after the 30-day period for requesting a hearing,¹⁰ and when the request is for a second hearing on the same issue.¹¹

In the present case, appellant's hearing requests were made more than 30 days after the date of issuance of the Office's prior decision dated January 25, 1996 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing before an Office representative in a letter dated March 25, 1997; he then again requested a hearing in letters dated March 25 and May 6, 1998. Hence, the Office was correct in stating in its November 25, 1997

⁴ Appellant submitted several letters to the Office regarding his hearing request and, in response to these letters, the Office sent appellant a letter, dated February 23, 1998, in which it discussed its handling of his hearing request. The February 23, 1998 letter is informational in nature and does not represent a final decision of the Office.

⁵ See 20 C.F.R. § 501.3(d)(2). For the same reason, the Board may not review the Office's August 7, 1996 decision.

⁶ 5 U.S.C. § 8124(b)(1).

⁷ *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

⁸ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁹ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹⁰ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹¹ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

and May 26, 1998 decisions that appellant was not entitled to a hearing as a matter of right because his hearing requests were not made within 30 days of the Office's January 25, 1996 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 November 25, 1997 and May 26, 1998 decisions, properly exercised its discretion by stating that it had denied appellant's hearing requests on the basis that the main issue of the present case could equally well be addressed by requesting reconsideration and submitting evidence which showed that appellant had a greater than seven percent permanent impairment of his left thumb. 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.¹² 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 requests for a hearing under section 8124 of the Act.

The decisions of the Office of Workers' Compensation Programs dated May 26, 1998 and November 25, 1997 are affirmed.

Dated, Washington, D.C.
February 9, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹² *Daniel J. Perea*, 42 ECAB 214, 221 (1990).