

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN R. MADILL and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Battle Creek, MI

*Docket No. 99-432; Submitted on the Record;
Issued July 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion.

On October 18, 1981 appellant, then a 51-year-old boiler plant operator, sustained employment-related fractures to both wrists. He returned to full duty on December 21, 1981, sustained a recurrence of disability on January 18, 1985 and has not worked since. Appellant was subsequently placed on the periodic rolls. By decision dated April 29, 1988, the Office determined that he had the wage-earning capacity of a telephone solicitor and reduced his compensation accordingly. Following further development, by letter dated March 11, 1997, the employing establishment offered appellant a modified position which the Office deemed suitable. He declined the offered position and, by decision dated June 20, 1997, the Office terminated his wage-loss compensation on the grounds that he refused an offer of suitable work. In a letter dated July 30, 1998 and postmarked July 31, 1998, appellant requested a hearing. By decision dated September 18, 1998, the Office denied his hearing request on the grounds that it was untimely filed. The instant appeal follows.

The only decision before the Board in this appeal is the Office decision dated September 18, 1998 in which appellant's request for a hearing was denied. Since more than one year had elapsed between the date of the Office's most recent merit decision dated June 20, 1997 and the filing of appellant's appeal on November 11, 1998, the Board lacks jurisdiction to review the merits of appellant's claim.¹

¹ 20 C.F.R. § 501.3(d)(2).

In the present case, the Office denied appellant's request for a hearing on the grounds that it was untimely filed. In its September 18, 1998 decision, the Office stated that appellant was not, as a matter of right, entitled to a hearing since his request had not been made within 30 days of its June 20, 1997 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue could be addressed through a reconsideration application.

The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,² 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.³ In the present case, appellant's request for a hearing dated July 30, 1998 and postmarked July 31, 1998 was made more than 30 days after the issuance of the Office's prior decision dated June 20, 1997 and, thus, appellant was not entitled to a hearing as a matter of right, which the Office properly stated in its September 18, 1998 decision.

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, in its September 18, 1998 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue could be addressed through a reconsideration application. 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.⁴ 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.

² 5 U.S.C. § 8101-8191.

³ *Henry Moreno*, 39 ECAB 475 (1988).

⁴ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated September 18, 1998 is hereby affirmed.

Dated, Washington, D.C.
July 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member