

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. WHEELER and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, TX

*Docket No. 98-1212; Submitted on the Record;
Issued June 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's November 10, 1997 request for a hearing before an Office hearing representative.

In a decision dated January 28, 1997, the Office reviewed the merits of appellant's claim and found that the evidence submitted in support of her request for reconsideration was insufficient to warrant modification of its prior decision.

On November 10, 1997 appellant requested a hearing before an Office hearing representative.

In a decision dated January 8, 1998, the Office found that appellant had previously requested reconsideration and was therefore not entitled to a hearing as a matter of right. The Office exercised its discretion and denied appellant's request on the grounds that she could equally well address the issue in her case by requesting reconsideration and submitting evidence not previously considered establishing that the claimed disability was related to her accepted employment injury of June 9, 1992.

On February 26, 1998 appellant's authorized attorney requested that the Board review the Office's January 8, 1998 decision.

The Board finds that the Office properly denied appellant's November 10, 1997 request for a hearing.

Any claimant not satisfied with a final decision of the Office shall be afforded an opportunity for an oral hearing before an Office representative. A hearing must be requested in writing within 30 days of the date of issuance of the decision. A claimant is not entitled to an

oral hearing if the request is not made within 30 days of the date of issuance of the decision or if a request for reconsideration of the decision is made prior to requesting a hearing.¹

The Board has held, however, that the Office, in its broad discretionary authority to administer the Federal Employees' Compensation 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 that discretionary authority.² Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request when the request is made after the 30-day period for requesting a hearing³ or when the request is made after a request for reconsideration.⁴ In such cases, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁵ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and of Board precedent.⁶

Appellant did not make her November 10, 1997 request for a hearing prior to requesting reconsideration. Indeed, the Office issued its January 28, 1997 decision in response to an earlier request for reconsideration. For this reason appellant is not entitled to a hearing as a matter of right.⁷ The Office nonetheless exercised its discretion and denied appellant's request on the grounds that she could equally well address the issue in her case through the reconsideration process. The Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing before an Office hearing representative.

¹ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.131(a).

² *Mary B. Moss*, 40 ECAB 640 (1989) (untimely request); *Shirley A. Jackson*, 39 ECAB 540 (1988) (hearing request made after request for reconsideration); *Johnny S. Henderson*, 34 ECAB 216 (1982) (request for a second hearing); *Rudolph Bermann*, 26 ECAB 354 (1975) (injury occurring prior to effective date of the statutory amendments providing a right to a hearing).

³ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁴ *James W. Croake*, 37 ECAB 219 (1985).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4.b(3) (June 1997).

⁶ *Jeff Micono*, 39 ECAB 617 (1988); *Henry Moreno*, 39 ECAB 475 (1988).

⁷ The statement of review rights attached to the Office's January 28, 1997 decision correctly excluded any notice of a right to a hearing.

The January 8, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 22, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member