

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY GARRETT and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Islip, NY

*Docket No. 98-1061; Submitted on the Record;
Issued May 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

In the present case, the Office accepted that appellant, an air traffic control specialist, sustained a herniated lumbar disc in the performance of duty on September 20, 1965. Appellant began receiving compensation for temporary total disability. In a decision dated November 19, 1996, the Office suspended appellant's compensation, effective December 7, 1996, on the grounds that he had not responded to requests for additional information regarding his earnings.

By letter dated November 25, 1997, appellant requested a hearing on his claim. In a decision dated January 26, 1998, the Office's Branch of Hearings and Review determined that appellant was not entitled to a hearing with respect to the suspension of benefits.¹

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

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.² Since appellant filed his appeal on February 6, 1998, the Board does not have jurisdiction over the November 19, 1996 Office decision suspending benefits.

Section 8124(b) of the Federal Employees' Compensation Act, which was added by the 1966 amendments to the Act, provides for hearings before the Office on request of the claimants. This provision, however, was specifically made applicable only to injuries occurring on or after

¹ The record also contains a proposed decision regarding reduction of appellant's compensation based on loss of wage-earning capacity; this is not a final decision and is not reviewable by the Board on this appeal. 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 501.3(d).

the date of enactment, July 4, 1966.³ In this case, the Office's Branch of Hearings and Review properly found that the date of injury was prior to July 4, 1966, and therefore appellant was not entitled to a hearing as a matter of right.

The Board has held that the Office, in its broad discretionary authority to administer the Act, has power to hold hearings in circumstances where no legal provision is made for such hearings, and the Office must exercise its discretion in such circumstances.⁴ 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 deductions from known facts.⁵ In this case, the Office indicated that the issue could be addressed by the submission of new and relevant evidence pursuant to a request for reconsideration. This is considered a proper exercise of the Office's discretionary authority.⁶ The Board finds no abuse of discretion in the denial of a request for a hearing in this case.

The decision of the Office of Workers' Compensation Programs dated January 26, 1998 is affirmed.

Dated, Washington, D.C.
May 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ See *Bethel B. Fish*, 36 ECAB 220 (1984).

⁴ *Mary B. Moss*, 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

⁵ *Janice Kirby*, 47 ECAB 220 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁶ See *Bethel B. Fish*, *supra* note 3.