

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNIE MINOR and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, TX

*Docket No. 00-775; Oral Argument Held March 15, 2001;
Issued April 16, 2001*

Appearances: *Bennie Minor, pro se; Miriam D. Ozur, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On November 3, 1978 appellant, then retired, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that, on August 13, 1973, he sustained an injury to the lower part of his back when a chair slipped from beneath him when he went to sit in it. On the same date, appellant filed a notice of occupational disease and claim for continuation of pay/compensation (Form CA-2), alleging that he sustained a lumbar herniated disc protrusion at L4-5 as a result of his employment.

By letter dated May 11, 1979, the Office informed appellant that unless he submitted further evidence, his claim would be denied as he failed to provide evidence that established timely filing of written notice of injury within five years from the date of the injury.

By decision dated August 30, 1979, the Office found that the medical evidence of record did not establish that appellant's condition was causally related to the August 13, 1973 injury. Appellant appealed, and by decision dated January 21, 1980, this Board set aside the prior decision due to the fact that it had received an incomplete record, and requested a *de novo* decision.

By decision dated June 18, 1980, the Office rejected appellant's claim because it found that a written claim for compensation was not filed within the five year time limitation as required by the Federal Employees' Compensation Act. Furthermore, medical care was denied because the medical evidence of record did not establish that appellant's condition was causally related to factors of his federal employment.

By letter dated January 1, 1981, appellant requested a hearing. At the hearing held on April 13, 1981 appellant testified that he gave his supervisor a Form CA-1 and a Form CA-2 on the day of the injury, but that he never got a copy of these forms. Appellant further testified that Frank Sariana was a witness to the fact that he handed these forms to his supervisor, but that he was unable to locate Mr. Sariana.

In a decision issued August 24, 1981, the hearing representative found that the prior decision rejecting the claim was proper, in that the evidence failed to establish that appellant filed a written notice of injury for compensation purposes in a timely manner as alleged, and that the evidence also failed to establish that appellant's back condition was causally related to his injury of August 13, 1973.

By letter dated June 28, 1999, appellant requested another hearing. In a decision dated November 12, 1999, the Office denied appellant's request for a hearing as appellant already had a hearing. The Office also exercised its discretion and further denied appellant's hearing request on the grounds that the timeliness issue could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which established that the notice of injury and claim for compensation was timely filed.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed his appeal on December 8, 1999, the only decision over which the Board has jurisdiction on this appeal is the November 12, 1999 decision denying his request for a second hearing. The Board does not have jurisdiction over the earlier decisions on the merits of the claim.²

The Board finds that the Office did not abuse its discretion in denying appellant's request for a second hearing. 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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing request when a hearing request is untimely or made after reconsideration under section 8128(a) are a proper interpretation of the Act and Board precedent.³

In this case, appellant, over 18 years after the Office hearing representative's decision, requested a second hearing on the same issue. The Office reviewed appellant's request and indicated that it was denied in that the case could equally well be addressed by requesting reconsideration from the district office and submitting new evidence in support of the request for review of the case. As the only limitation on the Office's authority is reasonableness, abuse of

¹ See 20 C.F.R. § 501.3(d)(2).

² See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No. 99-1345, issued November 3, 2000).

³ *Henry Moreno*, 39 ECAB 475 (1990).

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.⁴ There is no evidence in this case that the Office abused its discretion.

The decision of the Office of Workers' Compensation Programs dated November 12, 1999 is hereby affirmed.

Dated, Washington, DC
April 16, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁴ *Donald J. Perea*, 42 ECAB 214 (1990).