

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA E. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

*Docket No. 01-18; Submitted on the Record;
Issued August 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

This is the second appeal in the case. In the first appeal, the Board issued a decision dated June 2, 1999, finding that appellant failed to establish that she sustained a recurrence of disability causally related to her June 25, 1977 employment injury. The Board further noted that the evidence of record indicated that appellant has a psychiatric condition, which the Office has never accepted. The history of the case is contained in the prior Board decision and is incorporated herein by reference.¹

In a letter dated June 4, 2000, appellant requested an oral hearing on her claim. Radiology reports of March 29, 1999 studies were forwarded. By decision dated August 8, 2000, the Office's Branch of Hearings and Review determined that she was not entitled to a hearing as a matter of right as appellant had previously appealed to the Board and the disposition of Board decisions were final. The Office further denied the request on the grounds that the issue of whether appellant had sustained a recurrence of disability causally related to her work injury could equally well be addressed through the reconsideration process.

The Board finds that the August 8, 2000 decision from the Office's Branch of Hearings and Review denying appellant's request for a hearing must be affirmed.

¹ *Wanda E. Brown*, Docket No. 97-1933 (issued June 2, 1999).

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary....”

In the present case, the Board issued a decision dated June 2, 1999 finding that claimant failed to establish a recurrence of disability causally related to her June 25, 1977 employment injury. Claimant thereafter requested an oral hearing from the Office’s Branch of Hearings and Review. Claimant, in effect, requested a hearing before the Branch of Hearings and Review to review the Board’s decision.

The Board has clarified that claimants do not have the right under section 8124(b)(1) of the Federal Employees’ Compensation Act to request hearings in the absence of a final Office decision, and has further held that the Office does not have the discretionary authority to grant a request for a hearing immediately following a Board decision. In *Eileen A. Nelson*, the Board found that the Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Office after review by the Board.² In this case, following the Board’s June 2, 1999 decision, appellant requested a hearing from the Office, which was denied on August 8, 2000. There is no adverse final merit decision that has not been reviewed by the Board and, therefore, no basis for granting a hearing.³

² 46 ECAB 377 (1994).

³ This decision further noted that the Office’s Branch of Hearings and Review had exercised its discretion and had determined that the issue in the case could be equally well addressed with a request for reconsideration by the Office. The Board notes that the Office’s Branch of Hearings and Review improperly exercised its discretion in this regard. The Branch of Hearings and Review had no discretionary authority to grant a hearing in this case and should have instead found that this case was not in posture for a hearing. The Office’s exercise of “discretion” in this case was however harmless error. *Kenneth E. Legg*, (Docket No. 97-1256, issued December 14, 1998), petition for correction granted May 28, 1999.

The August 8, 2000 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Dated, Washington, DC
August 28, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member