

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN ANGIS and DEPARTMENT OF THE NAVY,  
NAVAL SHIPYARD, Portsmouth, NH

*Docket No. 01-265; Submitted on the Record;  
Issued August 16, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, 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 pursuant to section 8124(b) of the Federal Employees' Compensation Act.

On January 19, 1999 appellant, then a 50-year-old former marine-machinery mechanic, filed an occupational disease claim alleging that he developed asbestosis during his federal employment. Appellant began work in the Naval Shipyard of the employing establishment on October 2, 1967 and retired on May 29, 1994.

Also on January 19, 1999, appellant filed a CA-7 claim for a schedule award. The Office thereafter referred appellant to Dr. Charles Felton, a Board-certified pulmonary specialist, who in an August 24, 1999 report determined that there was no evidence of pulmonary asbestosis.

By decision dated September 23, 1999, the Office denied appellant's compensation claim. The Office found that the evidence indicated that appellant sustained a pulmonary injury consistent with exposure to asbestos in the performance of duty; however, the evidence did not support any permanent partial impairment or disability. The Office therefore accepted that appellant sustained pleural thickening of the left lobe and authorized appropriate medical treatment.

In a letter postmarked August 29, 2000, appellant requested an oral hearing of the September 23, 1999 decision.

By decision dated October 16, 2000, the Office found that appellant was not entitled to a hearing as a matter of right because his request for a hearing was untimely. Exercising its discretion, the Office denied appellant's request "for the reason that the issue in this case can equally well be addressed by requesting reconsideration from the district Office and submitting

evidence not previously considered which establishes that your injury warrants compensation due to permanent partial function impairment of the lungs.”

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed his appeal with the Board on November 6, 2000, the Board lacks jurisdiction to review the Office’s most recent merit decision dated September 23, 1999. Consequently, the only decision properly before the Board is the Office’s October 16, 2000 decision denying appellant’s request for an oral hearing.

The Board finds that the Office properly denied appellant’s request for a hearing under section 8124(b) of the Act.

Section 8124(b) of the Act, concerning a claimant’s entitlement to a hearing, states: “Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... 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.”<sup>2</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>3</sup>

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 sustained prior to the enactment of 1966 amendments to the Act which provided the right to a hearing,<sup>4</sup> when the request is made after the 30-day period established for requesting a hearing,<sup>5</sup> or when the request is for a second hearing on the same issue.<sup>6</sup> The Office’s procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.<sup>7</sup>

In the present case, appellant’s hearing request was made more than 30 days after the date of issuance of the Office’s prior decision dated September 23, 1999 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> *Frederick D. Richardson*, 45 ECAB 454 (1994).

<sup>4</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>5</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>6</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>7</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

postmarked August 29, 2000. Therefore, the Office was correct in stating in its October 16, 2000 decision that appellant was not entitled to a hearing as a matter of right because the hearing request was not made within 30 days of the Office's September 23, 1999 decision.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office in its October 16, 2000 decision, properly exercised its discretion by stating that it had considered appellant's request and had denied it on the basis that the issue in this case could equally well be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which established that his injury warrants compensation due to permanent partial function impairment of the lungs. 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.<sup>8</sup> In this 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. For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The decision of the Office of Workers' Compensation Programs dated October 16, 2000 is affirmed.

Dated, Washington, DC  
August 16, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).