

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAREY ANDERSON-BURNS and U.S. POSTAL SERVICE,  
POST OFFICE, Irvine, CA

*Docket No. 00-2098; Submitted on the Record;  
Issued May 17, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

This is the second appeal before the Board in this case. In the prior appeal,<sup>1</sup> the Board found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment, and affirmed the Office's October 24 and August 30, 1996 decisions. The Board also found that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review and affirmed the Office's April 11, 1997 decision. The Board further found that the Office did not abuse its discretion by denying appellant's request for an oral hearing and affirmed the Office's May 23, 1997 decision. The facts and circumstances of the case up to that point are set forth in the Board's December 2, 1999 decision and are incorporated herein by reference.

Following the Board's decision, by letter dated March 14, 2000, appellant requested that the Office provide her with a hearing on her claim. By decision dated May 19, 2000, the Branch of Hearings and Review denied appellant's hearing request, noting that the Board had previously issued a decision on the issue under consideration, and advised that, since it did not have jurisdiction to review decisions of the Board, the case was not in posture for a hearing.

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

The statutory right to a hearing under section 8124(b)(1) follows an initial decision of the Office.<sup>2</sup> Section 8124, which sets forth the appellate jurisdiction of the Office's Branch of

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<sup>1</sup> Docket No. 97-2198 (issued December 2, 1999).

<sup>2</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10(b) (July 1993).

Hearings and Review in holding hearings under the Federal Employees' Compensation Act,<sup>3</sup> provides:

“(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against the payment of compensation under this subchapter....

“(b)(1) 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....” (Emphasis added.)

It is readily apparent that the Act provides the Office with original jurisdiction in the processing of compensation claims,<sup>4</sup> and section 8124(a) specifically provides the Office with the duty and authority to issue an initial decision on an employee's claim for compensation.<sup>5</sup> Once an initial decision is made in a compensation case, appellate rights arise by which the employee may seek further review of his or her claim: the right to a hearing before the Office (section 8124(b)(1)), the right to reconsideration before the Office (section 8128(a)) or an appeal to the Board (section 8149).<sup>6</sup> The request for a hearing before an Office hearing representative or for review of the written record should be directed to the Office's Branch of Hearings and Review and address the issues adjudicated in the contested Office decision.<sup>7</sup> Requests for reconsideration under section 8128(a) should be directed to the local district Office which has jurisdiction over the case and present new evidence relevant to the claim or an arguable case for error.<sup>8</sup> Appeal requests to the Board are to be directed to the Board's office in Washington, D.C.<sup>9</sup>

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<sup>3</sup> 5 U.S.C. § 8124.

<sup>4</sup> See 20 C.F.R. § 10.125.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Review Process*, Chapter 2.1600.2(a) (December 1991).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10 (July 1993).

<sup>7</sup> See 20 C.F.R. § 10.616 and 10.618, and Federal (FECA) Procedure Manual, Part 2 -- *Claims, Hearings and Reviews of the Written Record*, Chapter 2.1601 (October 1992).

<sup>8</sup> See 20 C.F.R. § 10.600 and Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602 (May 1991).

<sup>9</sup> An appeal must be taken within one year of the Office's decision and is limited to a review of the evidence in the case record, which was before the Office at the time of its final decision; see 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

Section 8149 of the Act<sup>10</sup> provides that decisions of the Board on appeals taken from claims of employees are final. The Office, therefore, does not have jurisdiction to review decisions by the Board.<sup>11</sup>

Following the issuance of the Board's December 2, 1999 decision, appellant requested a hearing before an Office hearing representative. Appellant did not request reconsideration before the Office. The Board finds, therefore, that the Office's Branch of Hearings and Review properly advised her that the case was not in posture for a hearing since the Board had previously rendered a decision regarding the issue of whether she had met her burden of proof in establishing that she sustained an employment-related emotional condition in the performance of duty. There was no final decision of the Director left unreviewed over which the Office's Branch of Hearings and Review could assume jurisdiction. The decision of the Board was final and nonreviewable by the Office and therefore, the case was not in posture for a hearing.<sup>12</sup>

The Office indicated in the May 19, 2000 decision that it exercised its discretion to also deny the hearing request on the basis that the issue could be resolved by a request for reconsideration and the submission of new evidence supportive of appellant's claim. The Board finds that the Office's exercise of discretion to deny appellant's request for hearing was incorrect, as it had no discretion in this case; however, it was harmless error.

The decision of the Office of Workers' Compensation Programs dated May 19, 2000 is affirmed.

Dated, Washington, DC  
May 17, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> 5 U.S.C. § 8149.

<sup>11</sup> See 20 C.F.R. § 501.2(c).

<sup>12</sup> *Eileen A. Nelson*, 46 ECAB 377 (1994).