

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH R. BALCHUS and DEPARTMENT OF THE AIR FORCE,  
TACTICAL AIR COMMAND, BEALE AIR FORCE BASE, CA

*Docket No. 00-879; Submitted on the Record;  
Issued April 5, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, 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 under 5 U.S.C. § 8124.

The Board notes that appellant has three claims accepted by the Office. In claim number A13-0891900, the Office accepted the conditions of left wrist sprain, sprain of the right fifth finger, and authorized a subsequent surgery. By decision dated January 15, 1993, the Office awarded appellant a schedule award for a 40 percent loss of use of his left upper extremity.

In claim number A13-1030125, the Office accepted numerous conditions pertaining to appellant's right shoulder and right elbow and authorized subsequent surgery. By decision dated April 22, 1996, the Office awarded appellant a schedule award for 25 percent permanent impairment to his right arm. Appellant's subsequent request for modification of the award was denied in a nonmerit decision of June 27, 1996.

In claim number A13-1114605, the Office accepted the conditions of lacerated extensor tendons and tuft fractures left long and ring fingers with surgical repair. By decision dated June 25, 1997, the Office issued a schedule award for a 27 percent permanent impairment of the left hand. By letter postmarked September 27, 1999, appellant requested a hearing before an Office hearing representative. In a decision dated October 28, 1999, the Office denied appellant's request for a hearing as untimely under section 8124.

With respect to the Board's jurisdiction to review final decisions of the Office, an appeal must be filed no later than one year from the date of the Office's final decision.<sup>1</sup> Appellant's appeal letter to the Board was dated November 4, 1999 and received by the Board on November 24, 1999. Accordingly, the only decision over which the Board has jurisdiction on this appeal is the October 28, 1999 decision denying appellant's request for a hearing as

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

untimely under section 8124 in claim number A13-1114605. The Board additionally notes that in his appeal letter to the Board, appellant expressed concern regarding his eyes and regarding the use of steroids which were utilized in the course of his treatment of the accepted work-related injuries. However, as the record contains no final decision pertaining to his eye condition, the Board has no jurisdiction to review this for the first time on appeal.<sup>2</sup>

The Board finds that the Office properly denied appellant's request for a hearing under section 8124.

Section 8124(b) of the Federal Employees' Compensation 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>3</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>4</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 the 1966 amendments to the Act which provided the right to a hearing,<sup>5</sup> when the request is made after the 30-day period established for requesting a hearing,<sup>6</sup> or when the request is for a second hearing on the same issue.<sup>7</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 is a proper interpretation of the Act and Board precedent.<sup>8</sup>

In this case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated June 25, 1997 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter postmarked September 27, 1999. Hence, the Office was correct in stating in its October 28, 1999 decision that appellant was not entitled to a hearing as a matter of right because his hearing request was not made within 30 days of the Office's June 25, 1997 decision.

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<sup>2</sup> See 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> *Frederick D. Richardson*, 45 ECAB 454 (1994).

<sup>5</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>6</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>7</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>8</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

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 28, 1999 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the case could be resolved by submitting additional evidence to establish that he was entitled to a permanent impairment greater than that awarded by letter dated June 25, 1997. 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>9</sup> In the present 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 28, 1999 is affirmed.

Dated, Washington, DC  
April 5, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).