

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVIS COHEN and FEDERAL JUDICIARY,
OFFICE OF FEDERAL PUBLIC DEFENDER, Savannah, GA

*Docket No. 01-1081; Submitted on the Record;
Issued April 5, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On August 7, 1984 appellant, then a 43-year-old public defender, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on July 24, 1984 he sustained injuries to his lower back and upper right arm as a result of falling when he was carrying a box of books to the storage room. The Office accepted appellant's claim for a low back strain and adhesive capsulitis in his right shoulder.

The Office closed appellant's claim on January 11, 1989, as Dr. H. Clark Deriso, a Board-certified orthopedic surgeon, found that appellant's symptoms should have abated, he had no permanent impairment, and he may have recurring episodes since he had a "history of degenerative disc of the lumbar spine."

Appellant filed a claim for a schedule award. Based on a medical report dated February 12, 1990 by Dr. Dwight D. Campbell, a Board-certified orthopedic surgeon, on September 10, 1998, the Office medical adviser determined that appellant sustained an eight percent impairment of his right upper extremity. In a letter dated October 20, 1998, the Office requested that Dr. Campbell discuss whether he concurred with the assessment of the Office medical adviser. By letter dated October 26, 1998, Dr. Campbell indicated that he agreed with the rating of eight percent permanent impairment to the right upper extremity. By decision dated December 16, 1998, the Office awarded appellant a schedule award of eight percent impairment to his right arm.

By letter dated December 29, 1998, appellant's attorney indicated that appellant should get a schedule award for a 27 percent loss of use of the left arm. By letter dated June 7, 1999, appellant's attorney requested reconsideration, and again requested a schedule award for a 27 percent impairment to appellant's left arm. An amended request for reconsideration was filed on June 9, 1999.

By letter dated February 1, 2000, appellant, through his attorney, requested a hearing. By letter dated October 16, 2000, appellant's attorney again requested a hearing. In that letter, he indicated that he tried to obtain a hearing in the letters dated June 7, June 9 and July 29, 1999 and February 1, 2000, but had no response. In a letter dated December 21, 2000, the Office responded to a congressional inquiry by noting that appellant's initial request for a hearing was erroneously sent to the "Longshore hearings' branch instead of the FECA Hearings & Review Branch," but that the correct branch would soon receive his case file and consider the request. By decision dated February 5, 2001, appellant's request for a hearing was denied as untimely.

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.¹ As appellant's appeal was filed on February 28, 2001, the only decision before the Board at this time is the February 5, 2001 decision denying appellant's request for an oral hearing. Any decision dated prior to February 28, 2000, the Board does not have jurisdiction to review.²

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

Any claimant dissatisfied with a decision of the Office should be afforded an opportunity for an oral hearing or, in lieu thereof, review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a review is sought.³ If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁴ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁵

Appellant's February 1, 2000 request for a hearing postdated the Office's December 16, 1998 decision by more than 30 days. The Office properly concluded that he was not entitled to a hearing as a matter of right.⁶ Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue in this case could equally well be addressed

¹ See 20 C.F.R. § 5.3(d)(2).

² Similarly, the Board notes that a decision was issued on March 14, 2001, whereby the Office denied appellant's request for reconsideration. As this decision was issued after appellant filed the appeal before this Board, the Board does not have jurisdiction over this decision.

³ 20 C.F.R. § 10.616(a) (1999).

⁴ *Marilyn F. Wilson*, 52 ECAB ____ (Docket No. 00-1939, issued April 19, 2001); *Herbert C. Holley*, 33 ECAB 140 (1981).

⁵ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁶ 20 C.F.R. § 10.616(a) (1999).

by requesting reconsideration.⁷ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.⁸

The decision of the Office of Workers' Compensation Programs dated February 5, 2001 is affirmed.

Dated, Washington, DC
April 5, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion; *see, e.g., Jeff Micono*, 39 ECAB 617 (1988).

⁸ Although appellant's attorney suggested that he had filed a request for a rehearing as early as June 7, 1999, the evidence of record does not support this contention.