

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN R. MADILL and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Battle Creek, MI

*Docket No. 01-1324; Submitted on the Record;
Issued April 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

This case has been before the Board previously. By decision dated July 27, 2000, the Board affirmed a September 18, 1998 Office decision which denied appellant's request for a hearing regarding a June 20, 1997 decision. The law and facts as set forth in the previous Board decision and order are incorporated herein by reference.

Subsequent to the Board's July 27, 2000 decision, on October 9, 2000 appellant sent an inquiry to the Office regarding a hearing request that he had made of a decision of the Office dated April 29, 1988 and finalized May 3, 1988, which found that appellant had the wage-earning capacity of a telephone solicitor. Appellant enclosed a copy of a letter he had received which was dated June 15, 1988 and, in which the Branch of Hearings and Review acknowledged his hearing request.¹ By decision dated January 22, 2001, the Office denied appellant's hearing request on the grounds that it was untimely filed. The instant appeal follows.

The Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

The only decision before the Board in this appeal is the Office decision dated January 22, 2001, in which appellant's request for a hearing was denied. Since more than one year had elapsed between the date of the May 3, 1988 decision, (of which appellant now alleges he timely requested a hearing) and the filing of appellant's appeal on April 2, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.²

¹ The Board notes that the June 15, 1988 letter contains a typographical error. Appellant's Office file number is identified as 09-156107 when his file number is 09-256107.

² 20 C.F.R. § 501.3(d)(2).

Section 8124(b) of the Federal Employees' Compensation Act,³ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... 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."⁴

The regulations governing hearings state in pertinent part:

"(a) A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."⁵

In this case, the Office denied appellant's request for a hearing on the grounds that it was untimely filed. In its January 22, 2001 decision, the Office stated that appellant was not, as a matter of right, entitled to a hearing since his request had not been made within 30 days of its May 3, 1988 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue could be addressed through a reconsideration application.

The record in the instant case contains a letter dated June 15, 1988, in which the Office acknowledged receipt of a hearing request. The record further contains a letter dated May 8, 1997, in which the Office asked appellant about the requested 1988 hearing. In a May 15, 1997 response, appellant stated that, "in response to your letter dated 8 May 1997.... I do not wish to pursue this matter any longer." The Board thus finds that appellant withdrew his 1988 request for a hearing.

Regarding appellant's October 9, 2000 request for a hearing, the Board has held that 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 that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁶ In this case, appellant's request for a hearing dated October 9, 2000, was made more than 30 days after the issuance of the Office's prior decision dated May 3, 1988 and, thus, appellant was not entitled to a hearing as a matter of right, which the Office properly stated in its January 22, 2001 decision.

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.616(a) (1999).

⁶ *Henry Moreno*, 39 ECAB 475 (1988).

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, in its January 22, 2001 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue could be addressed through a reconsideration application. 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.⁷ 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.

The January 22, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 5, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).