

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN T. COLLINS and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, MN

*Docket No. 01-497; Submitted on the Record;
Issued January 2, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, 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.

The Office accepted that appellant sustained the following injuries in the performance of duty on May 7, 1987, lumbosacral strain, L5-S1 herniated disc and aggravation of L4-5 degenerative disc disease. By decision dated August 24, 1998, the Office determined that appellant had not established an employment-related emotional condition. The Office also denied compensation for wage loss from March 5, 1996 until authorized back surgery was performed. In a decision dated May 12, 1999, an Office hearing representative affirmed the prior decision.

In a letter dated April 25, 2000, appellant requested another hearing. By decision dated August 7, 2000, the Office's Branch of Hearings and Review found that appellant was not entitled to a hearing as a matter of right because he had previously received a hearing and subsequent decision dated May 12, 1999. The Branch further advised appellant that his request was denied because the issues in the case could properly be addressed through the reconsideration process.

The Board finds that the Office's Branch of Hearings and Review properly denied the April 25, 2000 hearing request.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed his appeal on November 4, 2000, the only decision over which the Board has jurisdiction on this appeal is the August 7, 2000 decision denying his request for a hearing.

¹ See 20 C.F.R. § 501.3(d).

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows:

“Before review under [s]ection 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....”

In the present case, appellant had requested and received an oral hearing on the issues raised in the Office’s August 24, 1998 decision. By letter dated April 25, 2000, appellant again requested an oral hearing on the same issue. There is no provision in the Act for more than one hearing on the same issue.² If a request for a second hearing is made, appellant is not entitled as a matter of right, but the Office must exercise its discretion in determining whether to grant a hearing.³ 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 deductions from known facts.⁴

In this case, the Office considered the issues presented and determined that appellant could pursue his claim through the reconsideration process and the submission of new evidence. The Board finds that this constitutes a proper exercise of the Office’s discretionary authority.⁵ There is no probative evidence of an abuse of discretion in denying appellant’s hearing request in this case.

² *John S. Baldwin*, 35 ECAB 1161 (1984).

³ *Id.*; *Johnny S. Henderson*, 34 ECAB 216 (1982).

⁴ *Janice Kirby*, 47 ECAB 220 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ *See Jeff Micono*, 39 ECAB 617 (1988).

The decision of the Office of Workers' Compensation Programs dated August 7, 2000 is affirmed.

Dated, Washington, DC
January 2, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member