U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAZEL D. CHERRY and DEPARTMENT OF VETERANS AFFAIRS, GRAND JUNCTION VETERANS HOSPITAL, Grand Junction, CO

Docket No. 01-685; Submitted on the Record;
Issued June 4, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

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

The only decision on appeal before the Board is the Office's October 6, 2000 decision denying appellant's request for a hearing. The Board has no jurisdiction to review the December 3, 1999 merit decision as it was issued more than one year before the January 8, 2001 filing of the current appeal.[1]

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[2] 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.[3]

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

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[1] *See* 20 C.F.R. § 501.3(d)(2).

[2] 5 U.S.C. § 8124(b)(1).

[3] *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

authority in deciding whether to grant a hearing.[4] 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,[5] when the request is made after the 30-day period for requesting a hearing,[6] and when the request is for a second hearing on the same issue.[7]

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated December 3, 1999 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing before an Office representative in a letter dated August 29, 2000 and date stamped as received by the Office on September 1, 2001. Hence, the Office was correct in stating in its decision that appellant was not entitled to a hearing as a matter of right because her hearing request was not made within 30 days of the Office's decision.

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 6, 2000 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 issue in the case can be addressed through a request for reconsideration to the district office and submitting evidence not previously considered at that time. 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.[8]

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.

Appellant argues that she did not receive the December 3, 1999 decision terminating her benefits. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.[9]

The record indicates the December 3, 1999 Office decision addressed to appellant at 270 W. Parkview Dr., Grand Jct., CO. 81503 and sent to appellant's representative at 1120 Lincoln Street Suite # 711, Denver, CO. 80203. These were the current addresses at that time of the

[4] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[5] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[6] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[7] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[8] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[9] *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

decision and they are the addresses appellant and her representative have provided the Office through subsequent correspondence with the Office.

For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.[10]

The October 6, 2000 decision of Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[10] The Board notes that the record contains a December 22, 1999 request for reconsideration which submitted evidence following the December 3, 1999 Office decision. On return of the case record, the Office should proceed to review this request and issue an appropriate decision.