

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FELIPE RODRIGUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Aguadilla, PR

*Docket No. 01-2268; Submitted on the Record;
Issued April 15, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing; and (2) whether the Office properly denied appellant's requests for reconsideration.¹

This case was previously before the Board.² By decision dated September 26, 2000, the Board affirmed the Office's November 4, 1998 decision which denied appellant's request for reconsideration on the grounds that the request was untimely filed and the evidence submitted did not establish clear evidence of error. By decision dated July 15, 1997, the Board affirmed August 1 and May 26, 1994 Office decisions denying appellant's claim for recurrences of disability on February 17 and March 2, 1994. The prior decisions of the Board are herein incorporated by reference.³

By letter dated October 9, 2000, appellant requested reconsideration but submitted no new evidence or argument.

By decision dated November 29, 2000, the Office denied appellant's request for reconsideration.

¹ In his appeal letter to the Board dated September 3, 2001, appellant requested a hearing. However, in letters to the Board dated April 17 and July 11, 2002, submitted through his representative, indicated that he wanted an oral hearing before an Office hearing representative.

² See Docket No. 99-935 (issued September 26, 2000); Docket No. 95-502 (issued July 15, 1997).

³ On June 7, 1993 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that he sustained an emotional condition as a result of having a co-worker yell at him. The Office accepted the claim for an anxiety reaction to the June 7, 1993 employment incident. The Office subsequently denied appellant's claims for recurrences of disability on February 17 and March 2, 1994.

By letter dated March 27, 2001, appellant requested reconsideration and submitted additional evidence.

By decision dated June 20, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.

By letter dated July 26, 2001, appellant requested an oral hearing.

By decision dated August 30, 2001, the Office denied appellant's request for an oral hearing on the grounds that he had previously requested reconsideration and was therefore not entitled to a hearing as a matter of right and that the issue in the case, whether appellant sustained a recurrence of disability on February 17 or March 2, 1994, could be addressed equally well through a request for reconsideration and the submission of additional evidence.⁴

The Board finds that the Office properly denied appellant's requests for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶

In support of his October 9, 2000 request for reconsideration, appellant submitted no new evidence or argument. As he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied his request for reconsideration in its November 29, 2000 decision.

In support of his March 27, 2001 request for reconsideration, appellant submitted copies of documents previously considered by the Office. He also submitted letters dated January 14 and March 10, 2001 to the employing establishment's manager of human resources in which he asked for the name of the station steward "who refused to sign the charge of October 20, 1993" with regard to an incident on October 7, 1993. Appellant also made reference to a February 12, 2001 letter from Dr. Ariel Rojas, a psychiatrist, requesting information from an employing establishment physician. He submitted numerous other documents dated January 9, 1984 to March 2, 2001. However, none of this evidence addresses the issue of whether appellant had a recurrence of disability on February 17 or March 2, 1994.

⁴ The record contains additional evidence that was not before the Office at the time it issued its August 30, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied his request for reconsideration in its June 20, 2001 decision.

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

Section 8124(b)(1) of the Federal Employees' Compensation 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."⁷ Thus appellant must request a hearing within the provided time limitation before he requests reconsideration or he is not entitled to a hearing as a matter of right.⁸ In the present case, appellant's July 26, 2001 hearing request was made after he had previously requested reconsideration in connection with his claim⁹ and, thus, appellant was not entitled to a hearing as a matter of right.

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.¹⁰ In this case, the Office advised appellant that it considered his request in relation to the issue involved and the hearing was denied on the basis that he could address this issue by submitting evidence which showed that modification of the Office's prior decision was warranted. Appellant was advised that he could request reconsideration and submit additional evidence.

The Board has held that an 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.¹¹ 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 that could be found to be an abuse of discretion.

For these reasons, the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

⁷ 5 U.S.C. § 8124(b)(1).

⁸ See *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

⁹ On October 29, 2000 and March 27, 2001 appellant had requested reconsideration.

¹⁰ See *Henry Moreno*, 39 ECAB 475, 482 (1988).

¹¹ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decisions of the Office of Workers' Compensation Programs dated August 30 and June 20, 2001 and November 29, 2000 are affirmed.¹²

Dated, Washington, DC
April 15, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹² The Board notes that, while the appeal was pending before the Board, the Office issued a decision dated October 24, 2001 in which the Office denied appellant's request for a hearing on the grounds that he was not entitled to a hearing as a matter of right because he had previously requested reconsideration. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decisions rendered by the Office on the same issues for which an appeal is filed are null and void; *see Jimmy W. Galetka*, 43 ECAB 432, 433-44 (1992).