

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARBIE M. LONG and DEPARTMENT OF STATE,
AMERICAN EMBASSY, Kuwait

*Docket No. 03-639; Submitted on the Record;
Issued September 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On January 29, 1999 appellant, then a 62-year-old secretary, filed a Form CA-2 claim for benefits, alleging that she developed a lupus condition and viral illness causally related to factors of employment. The Office accepted her claim for viral infection and aggravation of thrombocytopenia on April 2, 1999. The Office paid her appropriate compensation.

On December 13, 2000 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence indicated that appellant was no longer totally disabled due to any conditions causally related to her federal employment.

By decision dated January 12, 2001, the Office terminated appellant's compensation.

By letter dated April 27, 2002, appellant requested review of the written record. By letter dated July 9, 2002, appellant requested an oral hearing. By decision dated October 22, 2002, the Office denied appellant's request for an oral hearing. The Office stated that appellant's request was postmarked April 27, 2002, which was more than 30 days after the issuance of the Office's January 12, 2001 decision, and that she was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

The Board finds that the Office properly denied appellant's request for an oral hearing on her claim before an Office hearing representative.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days

after issuance of an Office final decision.¹ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.² The Office has discretion, however, to grant or deny a request that is made after this 30-day period.³ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁴

In the present case, because appellant's July 9, 2002 request for a hearing was postmarked more than 30 days after the Office's January 12, 2001 termination decision, she is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that she could pursue his claim through the reconsideration process. As appellant may address the issue in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.⁵

The October 22, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 3, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹ 5 U.S.C § 8124(b)(1).

² 20 C.F.R. § 10.616(a).

³ *William E. Seare*, 47 ECAB 663 (1996).

⁴ *Id.*

⁵ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).