

claim for compensation, finding that the medical evidence was insufficient to establish that appellant sustained an injury as alleged. On November 25, 2002 the Office received a letter from appellant dated November 20, 2002 requesting that his claim be reopened. On April 4, 2003 the Office received a letter dated April 1, 2003 from appellant requesting that his case be reopened. Appellant noted that he had previously requested this on November 20, 2002 but had not received an answer from the Office, and submitted additional evidence including medical reports, treatment notes and diagnostic studies. By letter dated April 14, 2003, the Office advised appellant that they could not reopen his claim and that, if he disagreed with the previous decision, he should follow the appeal rights noted in the August 2, 2002 decision.

On June 9, 2003 the Office received a request for an oral hearing from appellant. The request was dated May 20, 2003, and the postmark was dated May 21, 2003. By decision dated July 3, 2003, the Office denied appellant's request for an oral hearing on the grounds that the request was untimely. The Office found that appellant did not submit his request for an oral hearing within 30 days of the Office's August 2, 2002 decision and, therefore, he was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of issuance of the decision. 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

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated July 3, 2003 denying appellant's request for a hearing. Since more than one year had elapsed between the date of the Office's most recent merit decision dated August 2, 2002 and the filing of appellant's appeal with the Board on November 10, 2003, the Board lacks jurisdiction to review the merits of his claim.³ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,⁴ 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.⁵ In the present case, appellant's request for a hearing was postmarked May 21, 2003 and was thus made more than 30 days after the date of issuance of the Office's prior decision, dated

² *Marilyn F. Wilson*, 51 ECAB 234 (1999); 20 C.F.R. § 10.616(a).

³ 20 C.F.R. § 501.3(d)(2).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Claudio Vazquez*, 52 ECAB 496 (2001).

August 2, 2002. The Office was therefore correct in stating in its July 3, 2003 decision that appellant was not entitled to a hearing as a matter of right.

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, the Office, in its July 3, 2003 decision, 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 of whether appellant sustained an injury in the performance of duty 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.⁶ 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.⁷

CONCLUSION

The Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.⁸

⁶ See *Claudio Vazquez*, *supra* note 5; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁷ See *Marilyn F. Wilson*, *supra* note 2; 20 C.F.R. § 10.616(a).

⁸ The Board further notes that had appellant's November 20, 2002 letter been deemed a request for a hearing, it too was untimely.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member