

**United States Department of Labor
Employees' Compensation Appeals Board**

BEVERLY O'NEIL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 05-1728
Issued: June 9, 2006**

Appearances:
Beverly O'Neil, pro se
Thomas Giblin, Esq., for the Director

Oral Argument May 9, 2006

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 16, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated May 13, 2005, denying her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(d)(2) and 501.3(d), the Board's jurisdiction is limited to Office decisions issued within one year of the filing of the appeal and therefore the Board's jurisdiction is limited to the denial of a hearing issue.

ISSUE

The issue is whether the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

FACTUAL HISTORY

The case has been before the Board on prior appeals. In a decision dated March 1, 2001, the Board remanded the case for a merit decision with respect to the termination of appellant's compensation benefits.¹ The Office issued a merit decision, dated May 24, 2001, denying

¹ Docket No. 99-708 (issued March 1, 2001).

modification of a decision to terminate compensation benefits on March 19, 1997. Appellant's requests for reconsideration were denied without merit review of the claim in decisions dated October 17, 2001 and August 6, 2002. The Board affirmed the August 6, 2002 decision on February 20, 2003.² Appellant requested an oral hearing, which was denied by Office decision dated June 5, 2003. By decision dated May 26, 2004, the Board affirmed the June 5, 2003 Office decision.³ Appellant again requested an appeal to the Board, which was dismissed by order dated February 17, 2005 on the grounds that it did not have jurisdiction over any final decision of the Office.⁴ The history of the case is provided in the Board's prior decisions and is incorporated herein by reference.

On March 15, 2005 appellant requested a "full evidentiary hearing" with the Office's Branch of Hearings and Review with respect to her claim. By letter dated March 28, 2005, the Office discussed appellant's claim and advised appellant of her appeal rights.

By decision dated May 13, 2005, the Office denied the request for a hearing. The Office noted that the Board had issued a decision on February 17, 2005 with respect to causal relationship, and appellant was not entitled to hearing as a matter of right because the Branch of Hearings and Review did not have jurisdiction to review decisions of the Board. The Office considered appellant's request and it was further denied because the issue in the case could equally well be addressed by requesting reconsideration and submitting relevant evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act,⁵ concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.⁶ 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, including when the request is made after the 30-day period for requesting a hearing, and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁷ In these instances, the Office

² Docket No. 03-199 (issued February 20, 2003).

³ Docket No. 04-831 (issued May 26, 2004).

⁴ Docket No. 04-2116 (issued February 17, 2005).

⁵ 5 U.S.C. § 8124(b)(1).

⁶ *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

⁷ *Samuel R. Johnson*, 51 ECAB 612 (2000); *Eileen A. Nelson*, 46 ECAB 377 (1994).

will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁸

ANALYSIS

The issue in this case is whether the Office properly denied the request for a hearing. Although appellant alleged that she timely filed a request for a hearing of the May 24, 2001 Office merit decision, there is no evidence in the record to support her allegation. Appellant submitted a request for an “evidentiary hearing” with respect to her claim on March 15, 2005. The factual history of the case, as noted, reveals that the Board had issued an order dismissing her appeal on February 17, 2005. The last decision in the case was a Board decision, dated May 26, 2004, affirming the June 5, 2003 denial of a hearing request. With respect to a request for a hearing regarding the Board’s May 26, 2004 decision, the Office’s Branch of Hearings and Review properly found that appellant did not have a right to a hearing.⁹ As the Board noted in its May 26, 2004 decision, the Branch of Hearings and Review may not exercise jurisdiction over a Board decision.¹⁰ Appellant is not entitled a hearing regarding the issues reviewed in the May 26, 2004 decision and the Branch of Hearings and Review has no discretionary authority to grant a hearing.¹¹

The Board notes that the last merit decision in this case is dated May 24, 2001, and the Board has never reviewed the merits of the case. To the extent that appellant is requesting a hearing regarding the May 24, 2001 decision, she is not entitled to a hearing as a matter of right. Her March 15, 2005 request for a hearing was clearly not within 30 days of the March 24, 2001 decision, as required by 5 U.S.C. § 8124(b)(1). In addition, the Office’s regulations provide that appellant is not entitled to a hearing when she has previously submitted a reconsideration request, whether or not the request is granted.¹² Appellant requested reconsideration of the March 24, 2001 decision on October 17, 2001 and August 6, 2002. The Board finds she is not entitled a hearing as a matter of right with respect to the March 24, 2001 merit decision.

In this case, the Branch of Hearings and Review exercised its discretion and further denied the hearing request on the grounds that she could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office’s discretionary authority.¹³

⁸ *Claudio Vasquez*, 52 ECAB 496 (2001); *Johnny S. Henderson*, 34 ECAB 216 (1982).

⁹ The May 13, 2005 Office decision incorrectly identified the date of the Board decision and the issue reviewed, but did advise appellant that the Branch of Hearings and Review did not have jurisdiction to review decisions of the Board.

¹⁰ *See Eileen A. Nelson*, 46 ECAB 377, 381 (1994).

¹¹ *Id.*

¹² 20 C.F.R. § 10.616(a).

¹³ *See Mary E. Hite*, 42 ECAB 641, 647 (1991).

CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 13, 2005 is affirmed.

Issued: June 9, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board