

FACTUAL HISTORY

Appellant, a 63-year-old wharf building worker, sustained an employment-related traumatic injury on August 24, 1987 when he was struck by a falling scaffold. His claim was accepted for contusions to the left shoulder, forearm and hip, as well as aggravation of preexisting disc herniation at L4-5. The Office also accepted that appellant sustained a recurrence of disability on October 14, 1987. Appellant subsequently underwent a May 5, 1988 laminectomy and discectomy at L4-5.

On September 27, 1991 appellant filed a claim for a recurrence of disability beginning June 26, 1991. The Office denied the recurrence claim by decision dated February 21, 1992. Appellant requested an oral hearing, but failed to appear for the August 20, 1992 hearing. On September 2, 1992 the Office found that appellant had abandoned his request for a hearing. In a decision dated October 29, 1993, the Board affirmed the Office's February 21, 1992 decision denying appellant's claim for recurrence of disability.² The Board also affirmed the Branch of Hearings and Review's finding that appellant abandoned his request for an oral hearing.

The last time this case was before the Board, appellant had filed an appeal on June 20, 2003.³ He indicated that he was appealing a June 14, 2003 Office decision. However, the Office had not issued a final decision on June 14, 2003, nor had they issued any other final decisions within a year of the June 20, 2003 appeal. Accordingly, the Board issued an August 27, 2003 order dismissing the appeal for lack of jurisdiction.⁴

On March 15, 2007 the Office provided appellant a copy of the various appeal rights available under the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193 (2000). On March 21, 2007 appellant requested an oral hearing regarding a decision reportedly dated "[April 13, 2007]."

On April 27, 2007 the Branch of Hearings and Review denied appellant's request for an oral hearing. The hearing representative noted that the last decision issued in the case was the Board's August 27, 2003 order dismissing the June 20, 2003 appeal. Appellant was correctly advised that the Branch of Hearings and Review lacked the authority to review Board decisions. The hearing representative also informed appellant that he was not entitled to an oral hearing as a matter of right; presumably based on the timing of his request. Lastly, the hearing representative declined to grant a discretionary hearing, noting that appellant could address whatever concerns he had by filing a request for reconsideration with the Office.

² Docket No. 93-71 (issued October 29, 1993).

³ Docket No. 03-1659. The Board's August 27, 2003 order and its October 29, 1993 decision are incorporated herein by reference.

⁴ 20 C.F.R. §§ 501.2(c), 501.3(a), (d) (2007).

LEGAL PRECEDENT

A claimant dissatisfied with an Office decision regarding his claim is entitled, upon timely request, to a hearing before a representative of the Office.⁵ 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 the Office's decision for which a hearing is sought.⁶ If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. Although a claimant may not be entitled to a hearing as a matter of right, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.⁷

ANALYSIS

The last time the Office addressed the merits of appellant's claim was February 21, 1992, when it denied a recurrence of disability beginning June 26, 1991. Appellant subsequently requested an oral hearing, which he failed to attend, and thus, was found to have abandoned his request. He then sought review of both decisions before the Board, which the Board affirmed by decision dated October 29, 1993. The Board's last encounter with this claim was in 2003, when appellant requested review of a nonexistent June 14, 2003 Office decision. The Board dismissed the appeal on August 27, 2003.

When he requested a hearing on March 21, 2007, appellant again identified a nonexistent Office decision as the subject of his hearing request. In fact, the decision he identified, "[April 13, 2007]," would have been three weeks premature at the time of the request. As there was no Office decision issued within 30 days of appellant's March 21, 2007 request, he is not entitled to a hearing as a matter of right. While the Branch of Hearings and Review has the discretionary authority to grant a hearing, appellant has not identified a proper Office decision or any specific issues for which a hearing might otherwise be appropriate. The hearing representative surmised that appellant might be seeking review of the Board's August 27, 2003 order dismissing an earlier appeal. He further indicated that this issue could be equally well addressed by filing a request for reconsideration with the Office, presumably to determine if there were any final adverse Office decisions issued within a year of the June 20, 2003 appeal. It seem imprudent to pursue a dismissed appeal given that the Board's August 27, 2003 order did not address any substantive issues regarding appellant's entitlement to benefits under the Act,⁸ but appellant has not made his present intentions clear, and he has a history of obfuscating the issues by filing appeals and hearing requests for nonexistent Office decisions. Given the circumstances, the Board finds that the Branch of Hearings and Review properly exercised its discretion by denying appellant's request for a hearing.

⁵ 5 U.S.C. § 8124(b) (2000).

⁶ 20 C.F.R. § 10.616(a).

⁷ See *Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ Appellant might have been better served had the hearing representative explained that the previously denied June 26, 1991 recurrence claim could be revisited were appellant to file a specific request for reconsideration with the Office.

CONCLUSION

The Branch of Hearings and Review properly denied appellant's March 21, 2007 request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board