



his claim, appellant provided medical reports noting stress and anxiety regarding his work and his career goals.

By decision dated May 12, 2005, the Office denied appellant's emotional condition claim on the grounds that he had not established a compensable factor of employment or a causal relationship between his claimed stress and any employment factor.

On June 6, 2005 appellant requested an oral hearing. On his hearing request, he referred the Office to his address of record in Seattle, Washington.

By correspondence dated June 27, 2005, the Office advised appellant that it had received his hearing request and would schedule an oral hearing once it determined that the case was in posture for a hearing. By letter dated May 15, 2006, it notified appellant that his hearing was scheduled for June 20, 2006. The notification was mailed to appellant's address of record in Seattle, Washington, and also to his representative.

By decision dated July 17, 2006, the hearing representative found that appellant abandoned his request for a hearing on the grounds that he failed to appear at the scheduled hearing and did not contact the Office either prior to or subsequent to the scheduled hearing to request a postponement or explain his failure to appear.

In a July 24, 2006 statement, appellant explained that he was presently residing in California and had his mail forwarded from his address of record in Seattle, Washington. He stated that, because he only had monthly mail forwarding, he did not receive the Office's May 15, 2006 letter notifying him of the hearing date. Appellant also noted that his designated representative had "cancelled his services" and failed to notify him of his scheduled hearing.

By correspondence dated February 16, 2007, appellant requested another oral hearing. He noted the late receipt of the Office's May 15, 2006 letter notifying him of his scheduled hearing and the failure of his former representative to inform him of the hearing.

By decision dated April 5, 2007, the Office's Branch of Hearings and Review denied appellant's hearing request on the grounds that he had previously exercised his right to a hearing and had failed to appear. The Office noted that it had considered appellant's request and determined that his claim could be equally well addressed by his filing a request for reconsideration and submitting new evidence.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that, 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.<sup>1</sup> The Office's regulations provide that the request must be sent within 30 days of the date of the decision for

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<sup>1</sup> 5 U.S.C. § 8124(b)(1).

which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>2</sup>

The Board has held that the Office, in its broad discretionary authority in the administration of the Act,<sup>3</sup> 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.<sup>4</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.<sup>5</sup> Moreover, the Board has held that the Office has discretion to grant or deny a hearing when the request is made for a second hearing on the same issue.<sup>6</sup>

### ANALYSIS

In a May 12, 2005 decision, the Office denied appellant's claim of an emotional condition arising in the performance of duty. On June 6, 2005 appellant requested an oral hearing. The Office scheduled an oral hearing for June 20, 2006 and notified appellant and his representative at their addresses of record. By decision dated July 17, 2006, the Office found that appellant had abandoned his request for a hearing as he failed to appear at the hearing or to provide an explanation for his absence.<sup>7</sup> On July 24, 2006 appellant responded to the Office's abandonment decision, explaining that he moved to California and had his mail forwarded from Seattle, Washington and did not receive the notification of his hearing date. He also noted that his representative had cancelled his services and failed to inform him of the hearing date. On February 16, 2007 appellant requested another hearing. In an April 5, 2007 decision, the Office denied appellant's request for a hearing on the grounds that he was found to have abandoned his oral hearing request and was not entitled to another oral hearing as a matter of right. The Board finds that, as appellant abandoned the oral hearing scheduled for June 20, 2006, he is not entitled to another hearing as a matter of right.<sup>8</sup>

The Office properly exercised its discretion in denying appellant's request for another hearing by determining that the issue in the case could be equally well addressed by appellant requesting reconsideration and submitting new evidence on the issue at hand.<sup>9</sup> The Board has

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<sup>2</sup> 20 C.F.R. § 10.616(a).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>5</sup> *Teresa M. Valle*, 57 ECAB 542 (2006); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

<sup>6</sup> See generally *André Thyratron*, 54 ECAB 257 (2002); *Johnny S. Henderson*, 34 ECAB 216 (1982); *John A. Zibutis*, 33 ECAB 1879 (1982).

<sup>7</sup> The Board has no jurisdiction over this decision as it was issued more than one year prior to the filing of this appeal on November 16, 2007. See 20 C.F.R. § 501.3(d).

<sup>8</sup> *D.E.*, 59 ECAB \_\_\_\_ (Docket No. 07-2334, issued April 11, 2008).

<sup>9</sup> See *Joseph R. Giallanza*, 55 ECAB 186 (2003).

held that the only limitation on the Office's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and probable deduction from established facts.<sup>10</sup> In the present case, there is no evidence that the Office abused its discretion in denying appellant's request for a hearing under these circumstances. The Board finds that the Office acted properly in denying appellant's February 16, 2007 request for an oral hearing.

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for an oral hearing on the grounds that he had previously exercised his right to a hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>10</sup> See *Claudio Vazquez*, 52 ECAB 496 (2001); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).