

recurrence of disability on January 26, 2000 causally related to his accepted employment-related aggravation of thrombophlebitis of the left leg.²

By letter dated August 18, 2008, appellant requested an oral hearing or a review of the written record before an Office hearing representative. In a November 5, 2008 decision, the Office's Branch of Hearings and Review denied his request for a hearing as it did not have jurisdiction to review decisions of the Board. It further reviewed appellant's request and denied the hearing as it found that the issue of whether he sustained a recurrence of disability on January 26, 2000 causally related to his accepted employment injury could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered.

LEGAL PRECEDENT

The statutory right to a hearing under the Federal Employees' Compensation Act,³ 5 U.S.C. § 8124(b)(1), follows the initial final decision of the Office.⁴ Section 8124 of the Act provides:

“(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against the payment of compensation under this subchapter.”

* * *

“(b)(1) Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary [of Labor] 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....”⁵

The Act provides the Office with original jurisdiction in the processing of compensation claims and section 8124(a) provides the Office with the duty and authority to issue an initial decision on an employee's claim for compensation. Once an initial decision is made in a compensation case, appellate rights arise by which the claimant may seek further review of his claim: the right to a hearing before the Office, the right to reconsideration before the Office or an appeal to the Board. The Board has noted that the Office does not have the discretionary authority to grant a request for hearing immediately following a Board decision. The Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director. Following the Board's review of an Office decision, there is no final

² On May 13, 1999 appellant, then a 39-year-old distribution clerk, filed an occupational disease claim alleging that on October 15, 1998 he first became aware of his left ankle condition and realized that this condition was caused by his federal employment.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Id.* at § 8124(a)(1).

⁵ *Id.* at § 8124.

decision of the Office left unreviewed over which the Office's Branch of Hearings and Review can assume jurisdiction to exercise its discretionary appellate authority.⁶

ANALYSIS

Following issuance of the Office's July 31, 2000 decision finding that he did not sustain a recurrence of disability on January 26, 2000 causally related to his accepted employment-related injury, appellant exercised his appellate rights by requesting an appeal to the Board. The Board reviewed the case and issued a final decision on this claim on November 15, 2001 in Docket No. 00-2681. The Office did not subsequently issue a final decision. On August 18, 2008 appellant requested a hearing before the Office's Branch of Hearings and Review. As noted, following the Board's review of an Office decision, a claimant does not have the right under 5 U.S.C. § 8124(b)(1) to request a hearing in the absence of a final Office decision.⁷ Appellant had no right to request an oral hearing following issuance of the Board's November 15, 2001 decision. There was no final decision of the Office left unreviewed by the Board over which the Office's Branch of Hearings and Review could assume jurisdiction to exercise its discretionary appellate authority.⁸ The Board finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124 in its November 5, 2008 decision.⁹

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing under 5 U.S.C. § 8124.

⁶ *Robert N. Thomas*, 51 ECAB 180, 180-81 (1999).

⁷ *Id.*

⁸ *Id.* See also *Eileen A. Nelson*, 46 ECAB 377 (1994). The Branch of Hearings and Review stated in its November 5, 2008 decision that it had exercised its discretion in denying the hearing request.

⁹ *Robert N. Thomas*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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