



Appellant stopped working on November 20, 2000. She returned to light duty from March 28, 2001 through July 19, 2002. On July 20, 2002 appellant underwent an authorized left ankle arthroscopy. She returned to light duty on October 7, 2002. On January 29, 2003 she was released to permanent light-duty work. Appellant accepted a permanent light-duty position on November 3, 2003.

In a January 29, 2004 decision, the Office issued a wage-earning capacity determination finding that appellant's actual wages fairly and reasonably represented her wage-earning capacity. Appellant's wage-loss benefits were reduced to zero as the wages in her current light-duty position exceeded the wages of her date-of-injury position.<sup>1</sup>

Appellant subsequently filed claims for intermittent wage-loss compensation (CA-7 forms) for the period September 18 through November 7, 2008.

In a March 31, 2009 letter, the Office advised appellant that it had received her claims for wage-loss compensation. It noted that a formal wage-earning capacity determination had been issued and advised that the determination would remain in place unless a criteria for modifying a formal loss of wage-earning capacity decision was established.

On April 14, 2009 appellant's representative filed a request for a telephonic hearing before an Office hearing representative. He stated that he was appealing a March 31, 2009 Office decision. Appellant's representative contended that the employing establishment did not have work for appellant to perform on the claimed dates and, as such, appellant was entitled to wage-loss compensation.

By decision dated April 22, 2009, an Office hearing representative denied appellant's request for a telephonic hearing. He noted that the March 31, 2009 correspondence was not a final Office decision and that the most recent Office decision issued on August 16, 2006 concerned a schedule award.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of the Federal Employees' Compensation Act,<sup>2</sup> 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 not satisfied with a final decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on her claim before a representative of the Secretary."<sup>3</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>4</sup>

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<sup>1</sup> By decision dated August 18, 2006, the Office awarded appellant a schedule award for 10 percent permanent impairment to her left lower extremity.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Id.* at § 8124(b)(1).

<sup>4</sup> *Frederick D. Richardson*, 45 ECAB 454 (1994).

The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,<sup>5</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 or deny a hearing.<sup>6</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 the Act and Board precedent.<sup>7</sup>

### ANALYSIS

The issue is whether the Office properly denied appellant's request for a telephonic hearing.

Appellant's representative requested a hearing from a March 31, 2009 Office decision by telephonic hearing before an Office hearing representative. The Board finds that the record does not contain a March 31, 2009 final Office decision. Rather, the March 31, 2009 document is an informational letter, which notified appellant of the requirements for modifying her wage-earning capacity determination. It did not contain any findings of fact and a statement of reasons or accompanied by any appeal rights.<sup>8</sup> As a hearing may only be granted for review of a final adverse decision, the Office hearing representative properly denied the request for a hearing.<sup>9</sup>

### CONCLUSION

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

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>7</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>8</sup> See 20 C.F.R. § 10.126 (an Office decision shall contain findings of fact and a statement of reasons. It is accompanied by information about the claimant's appeal rights).

<sup>9</sup> See *R.H.*, Docket No. 07-1658 (issued December 17, 2007). The Board further notes that the last merit Office decision was issued on August 18, 2006 and regarded a schedule award. Thus, appellant did not file a timely request for a telephonic hearing from this decision, as her request was filed well over 30 days from the date of this decision. See *id.* at § 10.616.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2010  
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