



## **FACTUAL HISTORY**

On October 24, 2008 appellant, a 58-year-old kitchen helper, filed a traumatic injury claim (Form CA-1) for mental duress and depression she allegedly sustained on October 3, 2008. She alleged that she was harassed by management and that she felt helpless and depressed.

By decision dated December 8, 2008, the Office denied the claim, finding the evidence of record did not demonstrate that the alleged employment incident actually occurred.

On May 15, 2009 appellant requested an oral hearing. Appellant also submitted additional evidence.

By decision dated May 22, 2009, the Office denied appellant's hearing request as untimely filed.

## **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 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 her claim before a representative of the Secretary.

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.<sup>3</sup> When the Office revised its regulations effective January 4, 1999, the new regulations provided that a hearing was a review of an adverse decision by a hearing representative and that a claimant could choose between two formats: an oral hearing or a review of the written record.<sup>4</sup> These regulations also provide that the request for either type of hearing must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>5</sup>

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

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616. See *Leona B. Jacobs*, 55 ECAB 753 (2004).

deciding whether to grant a hearing.<sup>6</sup> In these instances, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>7</sup>

### **ANALYSIS**

On December 8, 2008 the Office denied appellant's claim. Appellant's hearing request was postmarked May 15, 2009 more than 30 days after the Office issued its initial decision and, therefore, the Office properly found that appellant was not entitled to a hearing as a matter of right.

The Office properly exercised its discretion and determined that appellant's request for an oral hearing could be equally well addressed by requesting reconsideration and submitting additional evidence. The Board has 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>8</sup> The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the Office's denial of her request for an oral hearing was proper under the law and the facts of this case.

### **CONCLUSION**

The Board finds the Office properly denied appellant's request for an oral hearing as untimely pursuant to 5 U.S.C. § 8124.

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<sup>6</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000); *Eileen A. Nelson*, 46 ECAB 377 (1994).

<sup>7</sup> *Claudio Vasquez*, 52 ECAB 496 (2001); *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>8</sup> *See André Thyatron*, 54 ECAB 257 (2002).

**ORDER**

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

Issued: February 25, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board