

In a December 3, 2008 demand letter, the Office advised appellant that the \$8,626.72 overpayment remained outstanding. It afforded her 30 days to make arrangements to repay the debt or it would begin to charge interest.

In a letter dated December 26, 2008 and postmarked December 27, 2008, appellant requested a prerecoumpment hearing, asserting that she was not obligated to repay the debt. Appellant submitted an overpayment recovery questionnaire and supporting financial documents.

By decision dated January 12, 2009, the Office denied appellant's request for a hearing. It found that the Board previously issued a decision dated November 4, 2008 on the issue of the overpayment. The Office noted that decisions of the Board are final and the Office's Branch of Hearings and Review does not have jurisdiction to review decisions of the Board.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "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 [her] claim before a representative of the Secretary."²

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.³ Once an initial decision is made in a compensation case, the claimant's rights arise by which the claimant may seek further review of her 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 clarified that the Office does not have the discretionary authority to grant a request for hearing immediately following a Board decision. The Office's Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director.⁴ Following the Board's review of an Office decision, there is no final decision of the Office left unreviewed over which the Branch of Hearings and Review can assume jurisdiction to exercise its discretionary appellate authority.⁵

ANALYSIS

Following the issuance of the Office's December 19, 2007 decision finding an overpayment of compensation, appellant exercised her appellate rights by requesting an appeal to the Board. The Board reviewed the case and issued its final decision on this claim on November 4, 2008 in Docket No. 08-732. The Office did not subsequently issue a final decision. On December 27, 2008 appellant requested an oral hearing before the Office's Branch of Hearings and Review. The Board has held that, following its review of an Office decision, a

² 5 U.S.C. § 8124(b)(1).

³ *Id.* at § 8124(a).

⁴ *Patricia G. Aiken*, 57 ECAB 441 (2006); *Eileen A. Nelson*, 46 ECAB 377 (1994).

⁵ *Robert N. Thomas*, 51 ECAB 180 (1999).

claimant does not have the right under 5 U.S.C. § 8124(b)(1) to request an oral hearing in the absence of a final Office decision.⁶ In the instant case, appellant had no right to request an oral hearing following the issuance of the Board's November 4, 2008 decision. There is no final Office decision left unreviewed over which the Office's Branch of Hearings and Review could assume jurisdiction to exercise its discretionary appellate authority.⁷ Therefore, the Board finds that the Office properly denied appellant's request for a hearing on January 12, 2009.⁸

CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2009 is affirmed.

Issued: January 14, 2010
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

⁶ *Id.*

⁷ *Id.* See also Eileen A. Nelson, *supra* note 4.

⁸ Robert N. Thomas, *supra* note 6.