



she slipped on ice and heard a pop or crack followed by pain, numbness and tingling from her neck to her left arm. Appellant stated that she was first aware of her condition in March 2007. She stopped work on May 19, 2009 to undergo neck surgery.

By decision dated July 7, 2009, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that the evidence submitted was insufficient to establish that the events occurred as alleged and no medical evidence provided a diagnosis which could be connected to the claimed event.

On July 15, 2009 appellant requested a review of the written record before an Office hearing representative. She submitted a July 16, 2009 statement along with medical evidence and diagnostic testing. By decision dated November 17, 2009, an Office hearing representative affirmed the July 7, 2009 Office decision finding that the medical evidence was insufficient to establish causal relationship.

On May 6, 2010 the Office received appellant's request for a hearing. Appellant submitted numerous medical records, diagnostic testing and physician reports.

In a May 11, 2010 decision, the Office denied appellant's request for a hearing as she had a previous written hearing (a review of the written record) on the issue of whether she sustained an injury as alleged. It further considered the request and determined that the issue of whether she sustained an injury as alleged could be equally well addressed on reconsideration.

### **LEGAL PRECEDENT**

A claimant for compensation not satisfied with a decision by the Office 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.<sup>2</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing on her claim as a matter of right unless the request is made within the requisite 30 days.<sup>3</sup>

A request received after that time will be subject to the Office's discretion.<sup>4</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 of such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>5</sup> The Board has held that the Office has the discretion to grant or deny a hearing request on a claim<sup>6</sup> when a request is made after the 30-day period for requesting a hearing,<sup>7</sup> and

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> *Delmont L. Thompson*, 51 ECAB 155 (1999); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>4</sup> 20 C.F.R. § 10.616(b).

<sup>5</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>6</sup> *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

<sup>7</sup> *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

when the request is for a second hearing on the same issue.<sup>8</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>9</sup>

### **ANALYSIS**

In the instant case, the Office issued a decision denying appellant's claim.<sup>10</sup> The Office hearing representative reviewed the written record and affirmed the Office's decision that appellant did not meet her burden of proof by decision dated November 17, 2009. On May 10, 2010 appellant requested a hearing regarding the same matter. The Board finds that the Office properly determined that she was not entitled to a second hearing under section 8123 as a matter of right.

The Office also exercised its discretion in further considering appellant's hearing request and denied it on the basis that she could pursue her claim by requesting reconsideration and submitting additional relevant and probative evidence. As appellant may pursue this issue through an alternative procedure, by submitting to the Office a request for reconsideration and by submitting supporting evidence, the Board finds that the Office did not abuse its discretion in denying her request for a second hearing.<sup>11</sup>

### **CONCLUSION**

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

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<sup>8</sup> *Johnny S. Henderson, supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> A review of the written record is a type of hearing. *See* 20 C.F.R. § 10.615 (provides that a hearing can be in one of two formats: an oral hearing or a review of the written record).

<sup>11</sup> *See L.D., 58 ECAB 344* (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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