

**United States Department of Labor
Employees' Compensation Appeals Board**

C.B., Appellant)

and)

DEPARTMENT OF THE NAVY, NORFOLK)
NAVAL SHIPYARD, Portsmouth, VA, Employer)

**Docket No. 10-1782
Issued: March 1, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 23, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 21, 2010 nonmerit decision denying her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision. Because more than 180 days elapsed from the most recent merit decision of June 5, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.¹

ISSUE

The issue is whether the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

¹ For final adverse decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e) (2009).

FACTUAL HISTORY

On August 21, 2008 appellant, then a 57-year-old painter, filed a traumatic injury claim for her back, right shoulder and right lower extremity injuries.² The Office accepted the claim for sprains of the lumbar back, right shoulder and upper arm, contusions of the right knee and ankle and sprain of the right knee medial collateral ligaments. Appellant received appropriate medical and compensation benefits.

By decision dated June 5, 2009, the Office terminated appellant's compensation and medical benefits effective June 6, 2009 on the grounds that her accepted conditions had resolved.

On June 10, 2009 appellant requested an oral hearing before an Office hearing representative. By letter dated August 20, 2009, the Office notified appellant that an oral hearing would be held in her case on October 1, 2009.

In a letter dated September 3, 2009, appellant withdrew her request for an oral hearing. She stated: "I no longer want to appeal this claim. I request cancellation."

On September 9, 2009 appellant submitted a notice of recurrence as of September 4, 2009. She stated that she had been separated from her job due to her inability to perform the duties of employment.

In a letter dated September 30, 2009, the Office informed appellant that it had received her timely request for a hearing, as well as her petition to withdraw the hearing request. The Office stated: "This is to notify you that we have accepted your request for the withdrawal of the hearing."

In a letter dated November 2, 2009, appellant requested a status report on her recurrence claim, noting that she required medical treatment for her back condition. By letter dated March 2, 2010, the Office informed appellant that it could not consider a recurrence claim on a terminated case.³

On April 30, 2010 appellant requested an oral hearing. In a decision dated May 21, 2010, the Office denied appellant's request for a hearing as untimely. It noted that although appellant was not entitled to a hearing as a matter of right, it had exercised its discretion to consider her request and determined that the issue in the case could be equally well addressed in a request for reconsideration.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act dealing with a claimant's entitlement to a hearing before an Office hearing representative states that "[b]efore review under section 8128(a) of this title, a claimant for compensation not satisfied with a

² The Office accepted appellant's claim for bilateral knee conditions under File No. xxxxxx891. In April 2009, appellant received a schedule award for 23 percent impairment of the right lower extremity.

³ This letter response was not a formal, final decision of the Office.

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 his claim before a representative of the Secretary.”⁴ The Board has noted that section 8124(b)(1) “is unequivocal in setting forth the limitation in requests for hearings...”⁵

ANALYSIS

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

Pursuant to section 8124(b)(1) of the Act, appellant was entitled to a hearing upon her request within 30 days after the date of the issuance of the Office’s June 5, 2009 termination decision.⁶ On June 10, 2009 she made a timely request for an oral hearing. After the Office scheduled the requested hearing, appellant withdrew her request on September 3, 2009. On September 9, 2009 she sought alternative relief by filing a recurrence claim. After receiving notice from the Office on March 2, 2010 that her recurrence claim would not be considered, on April 30, 2010 appellant filed another request for an oral hearing. As the April 30, 2010 request was made more than 30 days after the issuance of the June 5, 2009 decision, it was untimely. Therefore, appellant is not entitled to a hearing as a matter of right.

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 and it must exercise this discretionary authority in deciding whether to grant a hearing. Its procedures, which require it to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent. The Office exercised its discretion in this case and found that appellant’s right to further proceedings could be equally well addressed by requesting reconsideration. As the only limitation on its authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.⁷ There is no evidence that the Office abused its discretion in denying appellant’s request for a hearing under these circumstances.

On appeal, appellant contends that the accepted conditions have not resolved. She requests reconsideration by the Board and a new medical evaluation. As noted, the Board does not have jurisdiction over the merits of this case and therefore will not address appellant’s arguments.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ See *André Thyratron*, 54 ECAB 257 (2002). See also *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

⁶ See *supra* note 4 and accompanying text.

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).

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 May 21, 2010 is affirmed.

Issued: March 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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