

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNIE G. TYLER and DEPARTMENT OF LABOR,
MINE HEALTH & SAFETY ADMINISTRATION, Mount Hope, W.Va.

*Docket No. 97-461; Submitted on the Record;
Issued August 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs' denial of appellant's request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act constituted an abuse of discretion.¹

On February 12, 1994 appellant, then a 71-year-old retired federal mine inspector, filed an occupational disease claim, alleging that he had pneumoconiosis which he first became aware of April 27, 1992 and realized was causally related to his federal employment on October 8, 1992. Appellant retired January 3, 1994 and was last exposed to the alleged causative factor on December 30, 1993. In a decision dated October 18, 1995, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that he had pneumoconiosis which was causally related to factors of his federal employment. On September 10, 1996 appellant, with the assistance of counsel, requested an oral hearing before an Office hearing representative in his case.² By decision dated October 10, 1996, the Office denied appellant's request for a hearing as untimely filed.

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly denied appellant's request for a hearing as untimely filed.³

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the 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

¹ Appellant is now deceased. His claim is being pursued by Velma Tyler, his widow.

² On July 30, 1996 appellant authorized legal representation in his claim. On September 5, 1996 the Office sent counsel a copy of the October 18, 1995 decision and his appeal rights in response to his letter indicating that they wished to appeal the denial.

³ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on November 1, 1996 with a request postmarked October 29, 1996, the only decision before the Board is the Office's October 10, 1996 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁴ 5 U.S.C. § 8124(b)(1).

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 as a matter of right unless the request is made within the requisite 30 days.⁵

In this case, the Office issued its decision denying appellant's claim on October 18, 1995. Appellant requested an oral hearing in this claim by letter dated September 10, 1996 and postmarked September 14, 1996. Since appellant's request for a hearing was not within 30 days of the Office's decision, his request is untimely pursuant to section 8124(b)(1) of the Act and he was not entitled to a hearing as a matter of right.

Nonetheless, even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, the Office advised appellant that it considered his request in relation to the issue involved, and the hearing was denied on the basis that he could address this issue by submitting evidence which showed that he sustained pneumoconiosis or that his emphysema was causally related to his accepted employment activities. Appellant was advised that he may request reconsideration with additional evidence. The Board has held that 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 both logic and probable deductions from established facts.⁶ There is no evidence of an abuse of discretion in the denial of a hearing in this case.

The decision of the Office of Workers' Compensation Programs dated October 10, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁵ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).