

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY LEE OTIS and DEPARTMENT OF VETERANS AFFAIRS,
MIAMI VETERANS MEDICAL CENTER, Miami, FL

*Docket No. 97-1827; Submitted on the Record;
Issued September 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion.

On March 9, 1987 appellant, then a 34-year-old nursing assistant, sustained an employment-related back condition and adjustment disorder.¹ He received appropriate continuation of pay and compensation and, by decision dated April 12, 1995, the Office terminated his monetary compensation, effective April 30, 1995, on the grounds that he refused an offer of suitable work. Following appellant's request, a hearing was held on January 25, 1996 and by decision dated April 8, 1996, an Office hearing representative affirmed the prior decision. By letter dated January 7, 1997, appellant requested a second hearing. In a decision dated February 4, 1997, an Office hearing representative denied appellant's request on the grounds that he was not entitled to a second hearing as a matter of right. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue of whether the Office properly terminated his monetary compensation could be addressed through a reconsideration application. The instant appeal follows.

The only decision before the Board in this appeal is the decision dated February 4, 1997, in which appellant's request for a second hearing was denied. Since more than one year had elapsed between the date of the Office's most recent merit decision dated April 8, 1996 and

¹ The Office accepted that appellant sustained employment-related bulging annulus at L4-5, adjustment disorder, herniated disc at L3-4 that required surgery, and paraplegia as a consequence of the surgery.

appellant's appeal that was postmarked on April 30, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.²

Section 8124(b) of the Federal Employees' Compensation Act³ provides that a claimant not satisfied with a decision on his or her claim is entitled, upon timely request, to a hearing before a representative of the Office. There is no provision in the Act entitling a claimant to more than one hearing.⁴ The Board has held that if a claimant has received a hearing on an issue or set of issues and the hearing representative affirms the Office decision, a claimant is not entitled to another hearing on that issue or set of issues even if he or she proffers new evidence. He or she may receive an additional hearing only if the Office, in its discretion, grants a hearing.⁵ As the only limitation on the Office's 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 deduction from established facts.⁶

In this case, in its February 4, 1997 decision denying appellant's request for a second hearing, the Office noted that appellant had previously requested and received a hearing before the Office on the same issue. The hearing, which was held on January 25, 1996, resulted in an April 8, 1996 decision by an Office hearing representative who affirmed the Office's April 12, 1995 decision terminating appellant's monetary compensation. The Office denied appellant's request for a second hearing on the same issue based upon the fact that he had a full opportunity for the presentation of oral testimony at the first hearing and that, therefore, a second hearing would serve no useful purpose. As the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request, which could be found to be an abuse of discretion, the Board finds that the Office properly denied appellant's request for a second hearing.

² 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Fred Tripo*, 34 ECAB 290 (1982).

⁵ *Id.*; see also *Johnny S. Henderson*, 34 ECAB 216 (1982).

⁶ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated February 4, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 7, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member