U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARYANNE L. SHOLLY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION DOMICILIARY, White City, OR

Docket No. 97-2537; Submitted on the Record;
Issued February 22, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative.

On May 22, 1993 appellant, then a 65-year-old recreation volunteer, was carrying a tray when she tripped over a support bar for a basketball backboard and fell, sustaining bruises to her face and shins, pain in her teeth, a cut inside her mouth and x-ray evidence of damage to the fibulas. The Office, in a September 27, 1993 letter, accepted appellant's claim for multiple contusions and paid medical benefits. The Office subsequently requested information to support her requests for medical benefits for treatment given in 1994. In a June 25, 1996 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that she had not submitted any medical evidence and had not met her burden of proof in establishing that she had a medical condition causally related to her employment injury. In an April 28, 1997 letter, appellant requested a hearing before an Office hearing representative. In a May 28, 1997 decision, the Office found appellant's request for a hearing was untimely and therefore she was not entitled to a hearing as a matter of right. The Office considered the request for a hearing under its own motion and found that the issue in appellant's case could equally be well addressed by submitting new evidence not previously submitted and requesting reconsideration. The Office therefore denied appellant's request for a hearing.

The Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act[1] 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 decision of the Secretary ... is entitled, on request made within 30 days after the date of the

[1] 5 U.S.C. § 8124(b)(1).

issuance of the decision, to a hearing on his claim before a representative of the Secretary." The Board has noted that section 8124(b)(1) "is unequivocal in setting forth the limitation in requests for hearings."[2] The Office issued its decision on June 25, 1996. Appellant requested a hearing in an April 28, 1997 letter, 10 months after the Office's decision. She therefore was not entitled to a hearing as a matter of right because her request was more than 30 days after the Office's June 25, 1996 decision.

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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing; when the request is made after the 30-day period established for requesting a hearing; or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office 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. In this case, the Office found that appellant could have her case equally well considered by submitting new evidence and requesting reconsideration. 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 deductions from known facts.[3] There is no evidence that the Office, in exercising its discretion to deny appellant's request for a hearing, abused its discretion.[4]

[2] *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

[3] *Daniel J. Perea*, 42 ECAB 214 (1990).

[4] On appeal, appellant submitted additional medical evidence. The scope of the Board's review on appeal is limited to the evidence that was before the Office at the time it issued its final decision from which appeal is sought. 20 C.F.R. § 501.2(c). The Board, therefore, cannot review the evidence submitted by appellant.

The decision of the Office of Workers' Compensation Programs, dated May 28, 1997, is hereby affirmed.

Dated, Washington, D.C.
February 22, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member