

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

RICKY JARVIS, Appellant

and

**DEPARTMENT OF THE ARMY, CORPS OF
ENGINEERS, Vicksburg, MS, Employer**

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**Docket No. 05-860
Issued: February 3, 2006**

Appearances:

Leila Kilgore, Esq., for the appellant

Miriam D. Ozur, Esq., for the Director

Oral Argument held January 11, 2006

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JURISDICTION

On February 25, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 8, 2004, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review a November 14, 2003 decision, terminating his compensation benefits.

ISSUE

The issue is whether the Office properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

This case was previously before the Board.¹ By decision dated December 8, 2004, the Board dismissed the appeal due to lack of written authorization for appellant's representative. The appeal was reinstated but subsequently dismissed by the Board on February 10, 2005.

¹ Docket No. 05-76.

On August 21, 2001 appellant, then a 40-year-old revetment worker, filed a claim for a traumatic injury on August 19, 2001. The Office accepted his claim for a cervical strain and authorized medical treatment and compensation benefits for temporary total disability.

On October 10, 2003 the Office advised appellant that it proposed to terminate his medical and wage-loss benefits on the grounds that the weight of the medical evidence established that he had no residual medical condition or disability causally related to his August 19, 2001 employment injury. By decision dated November 14, 2003, the Office terminated appellant's compensation benefits.

By letter dated May 26, 2004 and postmarked on May 27, 2004, appellant requested an oral hearing.

By decision dated July 8, 2004, the Office denied appellant's request for an oral hearing on the grounds that his request was not timely filed within 30 days of the November 14, 2003 decision. The Office exercised its discretionary authority in considering appellant's hearing request. The Office determined that the issue could be equally well addressed through the reconsideration process by the submission of additional evidence to establish that his disability was causally related to his August 19, 2001 employment injury.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.² The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may--

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.³ The Office has discretion, however, to grant or deny a request

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.615, 616.

that is made after this 30-day period.⁴ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁵

ANALYSIS

The Office's termination decision was issued on November 14, 2003. Attached to the decision was a notice of appeal rights, informing appellant to read his rights carefully and to specify the procedure he wished to request. The attachment notified appellant that he had 30 days from the date of the Office's decision to request an oral hearing before the Branch of Hearings and Review.

Appellant's request for an oral hearing was dated May 26, 2004 and postmarked on May 27, 2004, more than 30 days following the Office's November 14, 2003 decision. For this reason, the Office properly found that appellant did not timely request an oral hearing before the Branch of Hearings and Review.

The Office proceeded to exercise its discretionary authority in considering appellant's hearing request. The Office noted that it considered the matter and determined that the issue could be equally well addressed through the reconsideration process by the submission of additional evidence to establish that appellant's disability was causally related to his August 19, 2001 employment injury. There is no evidence to establish that the Office abused its discretion in refusing to grant appellant's request for a hearing.⁶

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing.

⁴ *James Smith*, 53 ECAB 188 (2001).

⁵ *Id.*

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 8, 2004 is affirmed.

Issued: February 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board