

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

---

**JURI KOERN, Appellant**

**and**

**DEPARTMENT OF THE ARMY, CORPUS  
CHRISTI ARMY DEPOT, Corpus Christi, TX,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 06-654  
Issued: July 3, 2006**

*Appearances:*  
*Juri Koern, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 27, 2006 appellant filed an appeal of a August 10, 2005 decision in which the Office of Workers' Compensation Programs denied his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the August 10, 2005 decision denying appellant's hearing request. Because more than one year elapsed between the last merit decision of the Office dated March 9, 1999 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

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

**FACTUAL HISTORY**

On September 1, 1998 appellant, then a 60-year-old aircraft equipment specialist, filed an occupational disease claim alleging that federal service in the Persian Gulf War during 1990-91 caused multiple health problems. He submitted descriptions of his work in the war theater, his

symptoms and medical conditions, and a medical evaluation for Persian Gulf syndrome performed at Walter Reed Army Hospital. By letters dated January 14, 1999, the Office informed appellant of the evidence needed to support his claim and requested that the employing establishment respond to his claim. Appellant submitted a statement in response, again describing his duties and medical problems. In a decision dated March 9, 1999, the Office found that appellant established the employment-related exposure but that the medical evidence did not provide a diagnosis of conditions found to be due to the Gulf War exposure.

On March 19, 1999 appellant filed an appeal with the Board. On January 6, 2000 he requested that the appeal be withdrawn so that he could request reconsideration before the Office. By order dated March 27, 2000, the Board dismissed his appeal.<sup>1</sup> On April 12, 2000 he requested reconsideration and submitted additional medical evidence. Appellant retired in August 2000. In a September 15, 2000 decision, the Office found that appellant had not established clear evidence that the March 9, 1999 decision was erroneous. On July 11, 2004 appellant again requested reconsideration.<sup>2</sup> By letter dated August 10, 2004, the Office informed appellant that his “request for reconsideration has long since past [sic] the timeframe for the appeals process. No further action will be taken on your claim.” A copy of the September 15, 2000 decision was attached. By letter dated December 8, 2004, the Office noted that “the original denial of your claim was turned down August 10, 2004,” and forwarded copies of his appeal rights. On January 30, 2005 appellant requested a hearing. By decision dated August 10, 2005, an Office hearing representative denied appellant’s hearing request. The hearing representative noted that, as appellant previously requested reconsideration, he was not entitled to a hearing as a matter of right, and further denied the request on the grounds that the issue in the case could be fully addressed by requesting reconsideration with the Office.

### **LEGAL PRECEDENT**

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. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.<sup>3</sup> The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees’ Compensation Act,<sup>4</sup> has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>5</sup>

---

<sup>1</sup> Docket No. 99-2471 (issued March 27, 2000).

<sup>2</sup> In the interim between the September 15, 2000 decision and appellant’s request dated July 11, 2004, appellant submitted correspondence and additional evidence. In a letters dated December 5, 2003, the Office informed him that he should follow the appeal rights that accompanied the September 15, 2000 decision.

<sup>3</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>6</sup>

### **ANALYSIS**

In its August 10, 2005 decision, the Office denied appellant's request for a hearing on the grounds that he had previously requested reconsideration with the Office. The Office properly found that appellant was not entitled to a hearing, as a matter of right, since he had previously requested reconsideration. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was also denied on the basis that the issue of whether his claimed conditions were causally related to his federal employment could be addressed through a reconsideration application.

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, the Office, in its August 10, 2005 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue in this case could be addressed through a reconsideration application. The Board has held that, 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.<sup>7</sup> In the present case, 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.

### **CONCLUSION**

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

---

<sup>6</sup> *Claudio Vazquez, supra* note 3.

<sup>7</sup> *See Claudio Vazquez, supra* note 3; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 10, 2005 be affirmed.

Issued: July 3, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board