

She underwent a left carpal tunnel release on March 28, 2002, followed by a right carpal tunnel release on May 9, 2002. Both surgical procedures were approved by the Office.

On January 3, 2003 appellant received schedule awards for 10 percent impairment of the right upper extremity and 10 percent impairment of the left upper extremity. However, this was modified on July 1, 2003 to reflect a 12 percent impairment of the left upper extremity and 10 percent impairment of the right upper extremity. On May 11, 2004 the Office granted an additional schedule award for both the left and right upper extremities, increasing appellant's overall impairment to 33 percent to each upper extremity. This latest award covered 137.28 weeks from February 2, 2004 to September 19, 2006.

On October 17, 2006 appellant filed a Form CA-7 requesting an additional schedule award. However, she did not submit any additional medical evidence addressing any increased impairment. On November 17, 2006 the Office advised appellant that she needed to obtain a current examination and impairment rating from her treating physician in order to process her recent claim for a schedule award. Appellant did not submit the requested medical information, but instead filed another claim for a schedule award (Form CA-7) on December 9, 2006.

By letter dated January 10, 2007, the Office acknowledged receipt of the December 9, 2006 CA-7 form and advised appellant that a decision regarding her entitlement to a schedule award had been issued May 11, 2004. The Office provided a copy of the earlier decision and explained that if appellant disagreed with the decision she could exercise her appeal rights.

In a letter to the claims examiner dated January 21, 2007, appellant requested a review of the written record. She also submitted the appeal request form that accompanied the May 11, 2004 schedule award decision.² The Office received both documents on January 26, 2007.

By decision dated March 7, 2007, the Branch of Hearings & Review denied appellant's request for review of the written record because it was untimely. Appellant was also denied a discretionary hearing. The Branch of Hearings & Review advised that she could pursue her claim for a schedule award by requesting reconsideration before the Office.

LEGAL PRECEDENT

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or a review of the written record.³ 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.⁴ If the request is not made within 30 days, a claimant is not entitled to an oral hearing or a review of the written record as a matter of right. Although a

² The appeal request form was dated "January 23, 2006."

³ 5 U.S.C. § 8124(b) (2000); 20 C.F.R. § 10.616(a) (2007).

⁴ 20 C.F.R. § 10.616(a).

claimant may not be entitled to a hearing as a matter of right, the Office has discretionary authority to either grant or deny a hearing request and the Office must exercise its discretion.⁵

ANALYSIS

Appellant's January 2007 request for review of the written record was received more than 2½ years after the Office issued its May 11, 2004 schedule award. Because of the untimely nature of the request, appellant is not entitled to a hearing as a matter of right. In its March 7, 2007 decision, the Branch of Hearings & Review also denied appellant's request for a hearing on the grounds that the pertinent issue could be addressed by requesting reconsideration and submitting additional relevant evidence. This particular basis for denying appellant's request is considered a proper exercise of discretionary authority.⁶ Moreover, there is no evidence in the case record indicating that the Branch of Hearings & Review otherwise abused its discretion in denying appellant's hearing request. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.

CONCLUSION

The Branch of Hearings & Review properly denied appellant's request for a hearing.

⁵ See *Herbert C. Holley*, 33 ECAB 140 (1981).

⁶ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board