

rotator cuff tear while serving as a volunteer in Namibia. She underwent surgical repair on November 29, 2004. On March 7, 2005 the Office accepted that appellant sustained a right rotator cuff tear and right shoulder impingement related to her Peace Corps duties. On March 13, 2005 she filed a schedule award claim.

In a report dated February 14, 2005, Dr. William A. Ross, Jr., an attending Board-certified orthopedic surgeon, advised that maximum medical improvement had been reached. He stated that on physical examination of the right shoulder flexion, extension, abduction, internal and external rotation were within normal limits and advised that, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),¹ she had zero percent impairment. In an October 27, 2005 report, an Office medical adviser stated that, because appellant had full postoperative recovery and full range of motion of the right shoulder, she was not entitled to a schedule award.

By decision dated November 2, 2005, the Office found that appellant was not entitled to a schedule award. Appellant's appeal rights were attached. On November 8, 2005 she requested reconsideration. In a December 9, 2005 decision, the Office denied her request. On September 18, 2006 appellant requested a hearing and on October 16, 2006 a review of the written record.² With her request she submitted duplicates of evidence previously of record.

By decision dated November 20, 2006, an Office hearing representative denied appellant's request for a review of the written record. The hearing representative noted that, as appellant had previously requested reconsideration, she was not entitled to a record review 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 and submitting evidence not previously considered to establish that she was entitled to a schedule award.

LEGAL PRECEDENT

A 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.³ The Board has held that 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 that the Office must

¹ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

² By letter dated July 25, 2006, appellant referenced her November 18, 2005 reconsideration request and submitted additional evidence including an April 11, 2006 report in which Dr. Hugh C. McLeod, III, a Board-certified orthopedic surgeon, advised that she had no impairment. In a response dated August 1, 2006, the Office informed appellant that the purpose of her letter was unclear and advised her to follow the appeal rights contained in the December 9, 2005 decision.

³ *Claudio Vazquez*, 52 ECAB 496 (2001).

exercise this discretionary authority in deciding whether to grant a hearing.⁴ 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.⁵

ANALYSIS

In its November 20, 2006 decision, the Office denied appellant's request for a review of the written record on the grounds that she had previously requested reconsideration with the Office. The Office properly found that appellant was not, as a matter of right, entitled to a hearing since she 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 she was entitled to a schedule award could be addressed through a reconsideration application.

While the Office also has the discretionary power to grant a request for a review of the written record when a claimant is not entitled to a hearing as a matter of right, the Office, in its November 20, 2006 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 of whether she was entitled to a schedule award 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.⁶ 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 request for a review of the written record which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a review of the written record.

⁴ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁵ *Claudio Vazquez*, *supra* note 3.

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 20, 2006 be affirmed.

Issued: June 19, 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