

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JIMMY A. WALKER and DEPARTMENT OF THE NAVY,  
NAVAL SUPPLY CENTER, Oakland, Calif.

*Docket No. 96-1596; Submitted on the Record;  
Issued April 2, 1998*

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DECISION and ORDER

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

The issues are: (1) whether appellant has more than a four percent permanent impairment of his right leg for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for review of the written record as untimely.

Considering the second issue first, the Board finds that the Office improperly denied appellant's request for review of the written record as untimely.

In the present case, appellant sustained a torn lateral meniscus of his right knee when he fell at work on November 16, 1992. On January 15, 1993 appellant underwent a partial medial meniscectomy of his right knee which was authorized by the Office. By award of compensation dated February 5, 1996, the Office granted appellant a schedule award for a four percent permanent impairment of his right leg. By letter dated March 5, 1996, appellant requested a review of the written record in connection with the Office's February 5, 1996 decision. By decision dated April 10, 1996, the Office denied appellant's request for a review of the written record as untimely.

The Board notes that effective June 1, 1987 the Office's regulations implementing the Federal Employees' Compensation Act were revised. Several revisions were made which affect the appellate rights of employees who seek review of Office final decisions. Section 8124 provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision. The Office's new regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office has provided that

such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office's final decision.<sup>1</sup>

In the present case, the Office denied appellant's request for review of the written record on the grounds that the request was untimely.<sup>2</sup> The Board notes, however, that appellant's request for review of the written record was timely in that it was made within 30 days of the Office's prior decision dated February 5, 1996 and, thus, appellant is entitled to a review of the written record as a matter of right. Appellant requested a review of the written record in a letter dated March 5, 1996; the record does not contain a copy of the postmarked envelope in which appellant's request was sent and the date of appellant's request would be March 5, 1996, the date of the letter in which he made his request.<sup>3</sup> Therefore, the case will be remanded to the Office for a review of the written record to be followed by an appropriate decision.<sup>4</sup>

The decision of the Office of Workers' Compensation Programs dated April 10, 1996 is reversed and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
April 2, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>1</sup> 20 C.F.R. § 10.131(b); *see Michael J. Welsh*, 40 ECAB 994, 996 (1989).

<sup>2</sup> In its April 10, 1996 decision, the Office stated that appellant was not as a matter of right entitled to a review of the written record since his request was not made within 30 days of its February 5, 1996 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue of causal relationship could be addressed through a reconsideration application.

<sup>3</sup> *See* 20 C.F.R. § 10.131(b); *Lee F. Barrett*, 40 ECAB 892, 894-95 (1989).

<sup>4</sup> Given the Board's disposition of the second issue of the present case, it would be inappropriate for the Board to consider the merit issue at this time.