

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA M. HILL and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Waco, Tex.

*Docket No. 96-1583; Submitted on the Record;
Issued May 14, 1998*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record as untimely.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly 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.¹

In the present case, the Office denied appellant's request for a review of the written record on the grounds that the request was untimely. In its February 16, 1996 decision, the Office stated that appellant was not as a matter of right entitled to a review of the written record since her request was not made within 30 days of the Office's January 26, 1995 decision.² The Office noted that it had considered the matter in relation to the issue involved and indicated that

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

² By decision dated January 26, 1995, the Office denied appellant's claim that she sustained employment-related carpal tunnel syndrome on the grounds that she did not submit sufficient medical evidence in support of her claim. This merit decision is not currently before the Board in that it was issued more than one year prior to the May 1, 1996 filing of the present appeal with the Board; *see* 20 C.F.R. § 501.3(d)(2).

appellant's request was denied on the basis that the issue of causal relationship could be addressed through a reconsideration application.

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 exercise this discretionary authority in deciding whether to grant a hearing.³ The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.⁴

In the present case, appellant's request for a review of the written record was made more than 30 days after the date of issuance of the Office's prior decision dated January 26, 1995 and, thus, appellant was not 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 December 18, 1995 and postmarked December 28, 1995. Hence, the Office was correct in stating in its February 16, 1996 decision that appellant was not entitled to a review of the written record as a matter of right because her request for a review of the written record was not made within 30 days of the Office's January 26, 1995 decision.

While the Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right, the Office, in its February 16, 1996 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 for a review of the written record on the basis that the issue of performance of duty 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.⁵ 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.

³ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁴ *See Welsh*, *supra* note 1 at 996-97.

⁵ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated February 16, 1996 is affirmed.⁶

Dated, Washington, D.C.
May 14, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁶ The record contains a May 23, 1996 decision in which the Office denied modification of its January 26, 1995 decision. This decision is not currently before the Board in that it was issued after May 1, 1996, the date appellant filed the current appeal with the Board; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(3).