

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNIE L. McDONALD and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE, Okla.

*Docket No. 96-1817; Submitted on the Record;
Issued May 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly found that appellant did not make a timely request for review of the written record.

Section 8124(b)(1) of the Federal Employees' Compensation Act¹ provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary." Effective June 1, 1987 the Office's regulations were revised and, at 20 C.F.R. § 10.131(b), expanded section 8124(b) to provide an opportunity for "review of the written record" by an Office hearing representative in lieu of an oral hearing.² With regard to a request for a review of the written record, this regulation provides: "A review of the written record must be requested in writing within 30 days of the date of issuance of the decision, specify the decision and/or issue which is the subject of the request, and be made to the Office as set forth in the decision."

In the present case, the Office issued a decision on September 20, 1995 finding that the medical evidence did not support a causal relation between appellant's hearing loss and noise exposure in his employment. In a letter addressed to the Office's Branch of Hearings and Review dated October 3, 1995 and received by the regional Office on October 19, 1995, appellant submitted copies of audiograms and results of audiograms prepared by the employing establishment during appellant's employment there. Appellant stated, "Hope these will be of help in establishing my claim of hearing loss." By decision dated April 10, 1996, the Office's Branch of Hearings and Review found that appellant's February 27, 1996 letter did not constitute a timely request for a review of the written record. The decision did not address appellant's October 3, 1995 letter.

¹ 5 U.S.C. § 8124(b)(1).

² See *John M. Scales*, 42 ECAB 376 (1991). This review differs from a hearing in that it does not involve oral testimony or attendance of the claimant.

The Board finds that appellant's October 3, 1995 letter constituted a timely request for a review of the written record, and that the Office improperly denied such a review.

Appellant's October 3, 1995 letter was addressed to the Office's Branch of Hearings and Review and was received by the regional office within 30 days of the September 20, 1995 decision, pursuant to the Office's procedure manual at 2.1601.4(a), this constitutes a timely request. It meets the requirements of 20 C.F.R. § 10.131(b) to be considered a request for a review of the written record, in that it specifies the issue which is the subject of the request and was made to the Office's Branch of Hearings and Review as specified in the Office's September 20, 1995 decision.³ As appellant's October 3, 1995 letter did not make any reference to oral testimony or attendance of appellant, it cannot be considered a request for a hearing.⁴ It must, however, be considered a timely request for a review of the written record.⁵ The case will be returned to the Office for a review of the written record by an Office hearing representative.

The decision of the Office of Workers' Compensation Programs dated April 10, 1996 is reversed.

Dated, Washington, D.C.
May 12, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

³ See *Vicente P. Taimanglo*, 45 ECAB 504 (1994); *Richard J. Chabot*, 43 ECAB 357 (1991) for examples of language of claimants' letters found to constitute requests for reconsideration.

⁴ 20 C.F.R. § 10.131(a) requires that a hearing must be requested within 30 days of the date of issuance of the Office's decision.

⁵ See *Mary G. Allen*, 40 ECAB 190 (1988) (The Board found that, given a simultaneous request for a hearing under section 8124(b) and for reconsideration under section 8128 of the Act, the Office must first determine if the claimant is entitled to a hearing, and if not, must act on the request for reconsideration.)