

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REX R. PALMER and DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, Utah

*Docket No. 96-2496; Submitted on the Record;  
Issued October 13, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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

In the present case, appellant filed a claim on October 5, 1993, alleging that he sustained several types of cancer as a result of chemical exposure during his federal employment.<sup>1</sup> By decision dated June 22, 1995, the Office denied the claim on the grounds that appellant had failed to establish that his conditions were causally related to chemical exposure in his federal employment.

In a letter dated May 5, 1996, appellant requested a review of the written record. By decision dated June 18, 1996, the Office's Branch of Hearings and Review denied the request, noting that it was not filed within 30 days of the Office decision, and therefore appellant was not entitled to a review of the written record as a matter of right. The Office also advised appellant that the request was further denied because the issue could equally well be addressed by requesting reconsideration and submitting new and relevant evidence.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year of the filing of the appeal.<sup>2</sup> Since appellant filed his appeal on August 16, 1996, the only decision over which the Board has jurisdiction on this appeal is the June 18, 1996 decision denying his request for a review of the written record.

The Board finds that the Office did not abuse its discretion in denying appellant's request for a review of the written record.

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<sup>1</sup> Appellant described the conditions as transitional cell carcinoma of the bladder, adenocarcinoma of the kidney, histiocytis lymphoma, and nodular pleomorphic lymphoma.

<sup>2</sup> 20 C.F.R. § 501.3(d).

Section 8124(b)(1) of the Federal Employees' Compensation Act provides in pertinent part:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title 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.”<sup>3</sup>

Section 10.131(b) of the federal regulations implementing this section of the Act provides that in lieu of an oral hearing, a claimant shall be afforded the opportunity for a review of the written record.<sup>4</sup> A claimant is not entitled to a review of the written record if the request is not made within 30 days of the Office decision.<sup>5</sup> In this case, appellant requested a review of the written record by letter dated May 5, 1996. Since this is more than 30 days after the June 22, 1995 decision, appellant is not entitled to a review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.<sup>6</sup> In the June 18, 1996 decision, the Office advised appellant that the request was further denied on the grounds that appellant could equally well resolve the issue by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office's discretionary authority.<sup>7</sup> The Board finds no evidence of an abuse of discretion in this case.

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.131(b).

<sup>5</sup> *Id.*

<sup>6</sup> See *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>7</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989).

The decision of the Office of Workers' Compensation Programs dated June 18, 1996 is affirmed.

Dated, Washington, D.C.  
October 13, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member