

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of D.K. JOHNSON and DEPARTMENT OF THE NAVY,  
NAVAL STATION, Staten Island, NY

*Docket No. 98-219; Submitted on the Record;  
Issued November 24, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record made more than 30 days after the Office's decision.

On October 22, 1990 appellant, then a 50-year-old club manager, filed a notice of occupational disease, alleging that he suffered stress, post-traumatic stress disorder, depression, adjustment disorder, chronic low back pain, insomnia, anxiety, diabetes and heart disease as a result of his federal employment.

By decision dated September 6, 1991, the Office denied appellant's claim that his low back pain, diabetes and heart disease were causally related to the accepted factors of his federal employment. The Office, however, accepted his claim for aggravation of post-traumatic stress syndrome and aggravation of dysthymia.

By decision dated March 13, 1996, the Office rejected appellant's claim for disability compensation because the evidence failed to establish a causal relation between the injury and the disability and because the disability arose out of the willful misconduct of appellant with the intent to cause the injury or death of another. The Office informed appellant that he must make a request in writing within 30 days of its decision, as determined by the postmark of the letter, in order to receive an oral hearing or an examination of the written record.

By letter dated April 1, 1997, appellant requested an examination of the written record by an Office representative. The letter was received by the Office on May 21, 1997.

By decision dated June 26, 1997, the Office exercised its discretion and denied appellant's request for a review of the written record because it was not made within 30 days of the March 13, 1996 decision, denying compensation.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant's appeal was postmarked October 9, 1997, the only decision properly before the Board is the Office's June 26, 1997 decision denying appellant's request for a review of the written record.

The Board finds that the Office properly denied appellant's request for a review of the written record under section 8124 of the Federal Employees' Compensation Act.

Section 8124(b)(1) of the Act provides that "a claimant 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." As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days. Moreover, 20 C.F.R. § 10.131(b) affords appellant, in lieu of a hearing, an opportunity for a review of the written record by an Office if such a request is made within 30 days after the date of the issuance of a decision.<sup>2</sup>

In the present case, the Office issued a decision dated March 13, 1996, but appellant's request for a review of the written record was dated April 1, 1997. Since appellant's request for a review of the written record was not made within 30 days of the Office's March 13, 1996 decision, he was not entitled to a review of the written record as a matter of right.<sup>3</sup>

Even when the request for a review of the written record is not timely, the Office has discretion to grant the request and must exercise that discretion. In this case, the Office advised appellant that it considered his request in relation to the issue involved and it was denied because the issue could be equally addressed by requesting reconsideration and submitting new evidence establishing that the condition or disability is causally related to the injury. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>4</sup> There is no evidence of an abuse of discretion in the Office's denial of appellant's request for a review of the written record.

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> See 20 C.F.R. § 10.131(b).

<sup>3</sup> 20 C.F.R. § 10.131(a).

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated June 26, 1997 is affirmed.

Dated, Washington, D.C.  
November 24, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member