

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN HUGHES and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Philadelphia, PA

*Docket No. 99-1509; Submitted on the Record;
Issued August 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On February 16, 1978 appellant, then a 29-year-old tax examiner, injured her hand in the performance of duty while removing a staple from a book with a pair of scissors. The Office accepted the claim for a laceration of the left index finger and approved surgery to repair the tendon. Appellant was off work from February 16 to April 3, 1978, when she returned to light duty. She received compensation for wage-loss and medical benefits.

On June 2, 1981 appellant filed a claim for a schedule award.

By decision dated September 1, 1981, the Office issued appellant a schedule award for a 20 percent permanent impairment of the left index finger.

Appellant next filed a claim for an additional schedule award on March 11, 1996.

In a September 19, 1996 decision, the Office awarded appellant an additional schedule award for 22 percent impairment of the left index finger, for a total award of 42 percent impairment.

On October 9, 1996 appellant requested a review of the written record.

In a February 27, 1997 decision, an Office hearing representative affirmed the Office's finding of 42 percent permanent impairment of the left index finger but also remanded the claim for further development as to whether appellant had any permanent impairment that extended to her left hand.

In a decision dated July 28, 1997, the Office determined that appellant was not entitled to an increased schedule award beyond the 42 percent impairment rating previously issued.

Appellant requested a review of the written record on August 15, 1997.

In a decision dated December 31, 1997 and finalized January 2, 1998, an Office hearing representative affirmed the Office's July 28, 1997 decision.

On January 2, 1999 appellant again requested a review of the written record.

In a February 4, 1999 decision, the Office denied appellant's request for a written review of the record, noting that since appellant had already received a review of the written record, she was not entitled to another review of the same issue by the Branch of Hearings and Review. The Office further noted that the issue in the case could be equally well addressed by the reconsideration process.

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.¹ As appellant filed his appeal with the Board on April 29, 1999, the only decision properly before the Board is the Office's decision dated February 4, 1999, denying appellant's request for a review of the written record. The Board does not have jurisdiction to review the propriety of the Office's prior decisions regarding appellant's entitlement to an increased schedule award.

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

A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.² A claimant injured on or after July 4, 1966, who has received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision.

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 Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,⁴ when the request is made after the 30-day period for requesting a hearing⁵ and when the request is for a second hearing on the same issue.⁶

¹ 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.615 (1999).

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

⁴ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁵ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁶ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office in its 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 case could be resolved by submitting additional evidence on reconsideration to establish her entitlement to an increased schedule award. 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.⁷ 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 that could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a review of the written record.

The decision of the Office of Workers' Compensation Programs dated February 4, 1999 is hereby affirmed.

Dated, Washington, D.C.
August 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁷ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).