

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA J. SIMEROTH and DEPARTMENT OF THE AIR FORCE,
BEALE AIR FORCE BASE, CA

*Docket No. 99-1446; Submitted on the Record;
Issued July 17, 2000*

DECISION and ORDER

Before DAVID S. GERSON, 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 pursuant to section 8124(b) of the Federal Employees' Compensation Act.

The Office accepted appellant's claim for low back strain, for an injury she sustained on July 12, 1994 and subsequently a recurrence claim of the original injury, which caused her additional disability in June 1996. On November 7, 1997 appellant filed a second recurrence claim which the Office denied in a decision issued on January 20, 1998.

Appellant requested review of the written record to the Office's Branch of Hearings and Review by letter postmarked December 11, 1998. The Branch of Hearings and Review denied appellant's request on January 19, 1999, stating that, since her request was not made within 30 days, she was not entitled to an oral hearing or review of the written record as a matter of right. The Office informed appellant that she could request reconsideration by the Office and submit additional evidence.

The Board finds that the Office properly denied appellant's request for a review of the written record as untimely.

The only decision before the Board in this appeal is the January 19, 1999 decision, in which the Office denied appellant's request for review of the written record under 5 U.S.C. § 8124(b) on the grounds that it was untimely filed. Since more than one year has elapsed between the date of the Office's merit decision dated January 20, 1998 and the filing of appellant's appeal on March 4, 1999, the Board lacks jurisdiction to review the merits of appellant's claim.¹

¹ 20 C.F.R. § 501.3(d)(2).

Section 8124(b)(1) of the Act 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 [her] claim before a representative of the Secretary.”² Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice between two formats: an oral hearing or a review of the written record.³ The regulations provide that the hearing request must be sent within 30 days (as determined by the postmark or other carrier’s date marking) of the date of decision for which a hearing is sought.⁴

In the present case, appellant’s request for a review of the written record was postmarked December 11, 1998. Since this is more than 30 days after the January 20, 1998 Office 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.⁵ In this case, the Office advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office’s discretionary authority.⁶ 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.⁷ There is no indication that the Office abused its discretion in this case.

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ 20 C.F.R. § 10.616(a).

⁵ See *Cora L. Falcon*, 43 ECAB 915 (1992).

⁶ *Id.*

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

The decision of the Office of Workers' Compensation Programs dated January 19, 1999 is affirmed.

Dated, Washington, D.C.
July 17, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member