

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRY ANN BALLAM and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Canandaigua, NY

*Docket No. 99-5; Submitted on the Record;
Issued March 7, 2000*

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.

The Board has duly considered the matter and finds that the Office, in its September 10, 1997 decision, properly denied appellant's request for a review of the written record.

On July 22, 1993 appellant filed a claim that was later accepted for an acute inflammatory demyelinating polyneuropathy. On June 10, 1997 the Office denied appellant's claim for a schedule award for loss of vision. In a July 19, 1997 letter, appellant requested a review of the written record. In a September 10, 1997 decision, the Office denied appellant's request for a review of the written record on the grounds that it was not timely filed. The Office noted further considering the matter and found that the matter could be equally well addressed by a request for reconsideration, along with the submission of new evidence establishing that her current impairment was related to her accepted condition.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on July 24, 1998,² the only decision over which the Board has jurisdiction on this appeal is the September 10, 1997 Office decision denying her request for a review of the written record.

Section 8124(b)(1) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant not satisfied with a decision of the Secretary ... is entitled,

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d).

² On appeal, appellant asserted that she first filed an appeal in February 1998. However, the Board's records do not establish that appellant filed an appeal before July 24, 1998.

on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary.”³ Office regulations have expanded section 8124 to provide the opportunity for a “review of the written record” before an Office hearing representative in lieu of an “oral hearing.” The Office has provided that such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office’s final decision.⁴

The Office properly found that appellant’s request for a review of the written record was untimely. Her July 19, 1997 request for review of the written record was made more than 30 days after the Office’s June 10, 1997 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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. The principles underlying the Office’s authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office’s procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.⁵

The Board finds that the Office properly exercised its discretion by further denying appellant’s request upon finding that she could have the matter further addressed by the Office through a reconsideration request along with the submission of new evidence establishing that her claimed impairment was related to her accepted condition.

For these reasons, the Office properly denied appellant’s request for a review of the written record.

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.131(b).

⁵ *Michael J. Welsh*, 40 ECAB 994 (1989).

The September 10, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 7, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member