

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUDY P. MARTINEZ and DEPARTMENT OF THE AIR FORCE,
SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, TX

*Docket No. 00-2542; Submitted on the Record;
Issued July 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

In a decision dated February 2, 1998, the Office granted appellant a schedule award for an 11 percent binaural hearing loss. The award covered a period of 22 weeks, beginning October 22, 1997 and continuing through March 24, 1998.

Appellant subsequently filed a request for review of the written record dated February 13, 2000.

In a decision dated April 27, 2000, the Office found that appellant did not submit his request for review within 30 days of the Office's February 2, 1998 decision, and therefore, he was not entitled to a review of the written record as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process. Appellant subsequently filed an appeal with the Board on July 25, 2000.¹

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

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the

¹ 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. *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2). As appellant filed his appeal with the Board on July 25, 2000, the Board lacks jurisdiction to review the Office's February 2, 1998 schedule award. Consequently, the only decision properly before the Board is the Office's April 27, 2000 decision denying appellant's request for review of the written record.

date of the issuance of the decision. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the issuance of the decision.² The Office has discretion, however, to grant or deny a request that is made after this 30-day period.³ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁴

Appellant's request for review of the written record was dated February 13, 2000, which is more than 30 days after the Office's February 2, 1998 schedule award. As such, appellant is not entitled to review of the written record as a matter of right. Additionally, the Office considered whether to grant a discretionary review, and correctly advised appellant that the issue of whether he had a greater percentage hearing loss than previously awarded could equally well be addressed by requesting reconsideration.⁵ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for review of the written record.

The April 27, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 9, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

² 20 C.F.R. § 10.616(a) (1999).

³ *Herbert C. Holley*, 33 ECAB 140 (1981).

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

⁵ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).