

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GABRIEL VELEZ and DEPARTMENT OF THE AIR FORCE,
AIR FORCE ACADEMY, Colorado Springs, CO

*Docket No. 00-2753; Submitted on the Record;
Issued July 2, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely.

Appellant, a 43-year-old wood crafter, filed a notice of occupational disease on May 19, 1999 alleging that he developed right elbow pain due to factors of his federal employment. The Office of Workers' Compensation Programs denied appellant's claim by decision dated July 19, 1999 finding that he failed to establish fact of injury. Appellant submitted a letter dated July 23, 1999 received by the Office on August 2, 1999 requesting "help and consideration." Appellant also submitted additional evidence. On May 9, 2000 appellant requested a review of the written record. By decision dated June 5, 2000, the Branch of Hearings and Review denied appellant's request as untimely.

The only Office decision before the Board on this appeal is the Office's Branch of Hearings and Review decision dated June 5, 2000 denying appellant's request for review of the written record on the basis that it was not timely filed. Since more than one year elapsed between the date of the Office's most recent merit decision, July 19, 1999, and the filing of appellant's appeal on August 25, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.¹

Section 8124(b) of the Federal Employees' Compensation Act,² 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, on

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

² 5 U.S.C. §§ 8101-8193.

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

The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.⁴ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.⁵

In the instant case, the Office properly determined appellant’s May 9, 2000⁶ request for a review of the written record was not timely filed as it was made more than 30 days after the issuance of the Office’s July 19, 1999 decision. The Office, therefore, properly denied appellant’s hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant’s request for a hearing as untimely and properly exercised its discretion in determining to deny appellant’s request for a hearing as he had other review options available.

The Board finds that the Office did not abuse its discretion in finding that appellant’s request for a review of the written record was untimely.

³ 5 U.S.C. § 8124(b)(1).

⁴ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁵ *Id.*

⁶ The July 23, 1999 letter to the Office did not indicate which if any appeal rights appellant was pursuing and is not sufficient to establish that appellant requested an oral hearing on that date.

The June 5, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 2, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member