

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMY D. SMITH and TENNESSEE VALLEY AUTHORITY,
CUMBERLAND CITY STEAM PLANT, Cumberland City, TN

*Docket No. 01-2237; Submitted on the Record;
Issued May 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
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 facts in this case indicate that, on January 17, 2000, appellant, then a 52-year-old boilermaker and welder, filed a claim for occupational disease (Form CA-2), alleging that he developed hearing loss due to employment-related noise exposure. In a decision dated August 16, 2000, the Office denied appellant's claim, finding that, as appellant's last employment-related noise exposure occurred in 1991, his claim was not timely filed.

By letter postmarked March 22, 2001, appellant requested a review of the written record and submitted additional evidence in support of his claim.

In a decision dated June 27, 2001, the Office denied appellant's request for a review of the written record on the grounds that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issues involved, and that the request was further denied because the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

The only decision before the Board in this appeal is the Office's decision dated June 27, 2001 denying appellant's request for a review of the written record. As more than one year elapsed between the date of the Office's August 16, 2000 decision, and the filing of appellant's appeal, postmarked August 21, 2001 and received by the Board on August 24, 2001, the Board lacks jurisdiction to review the August 16, 2000 decision.¹

The Board finds that the Office did not abuse its discretion in denying appellant's request for a review of the written record.

¹ 20 C.F.R. § 501.3(d)(2).

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office's final decision.² The Office's regulations 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."³ The Office provided that such review of the written record is also subject to the same requirement that the request must 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. Appellant's request for review of the written record postmarked March 22, 2001 was made more than 30 days after the Office's August 16, 2000 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.⁵ 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.⁶

The Board finds that the Office properly exercised its discretion by further denying appellant's request upon finding that he could have the matter further addressed by the Office through a reconsideration request along with the submission of new factual and medical evidence.

² 5 U.S.C. § 8124(b).

³ See 20 C.F.R. §§ 10.615-10.616 (1999).

⁴ See *id.*

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

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601 (October 1992).

The June 27, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 3, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member