

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE A. CARLTON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Jacksonville, FL

*Docket No. 02-201; Submitted on the Record;
Issued October 25, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden to establish that she sustained a dermatitis condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a review of the written record by an Office hearing representative.

On May 10, 2001 appellant, a 57-year-old customer service representative, filed a Form CA-2 claim for benefits based on occupational disease, alleging that she had sustained a dermatitis condition which was causally related to factors of her employment. She stated that she had been "bitten" at work and that she subsequently had developed an itching condition.

Appellant submitted a May 10, 2001 report from Dr. Michael Jervis, an osteopath, who diagnosed contact dermatitis and summarized the treatment and precautions to be taken by a patient with this condition, but did not discuss or explain whether appellant's condition was causally related to factors of her employment. Dr. Jervis also submitted a work release form releasing appellant to return to work on May 12, 2001 and a prescription for itching.

Appellant also submitted a notice of alleged safety or health hazards, which stated:

"Employees working on the [second] floor at 2055 Reyko Road Building are experiencing skin irritation and insect bites, which could be from insect infestation."

By letter dated May 23, 2001, the Office requested additional information, including a description of factors of employment and a comprehensive medical report from a physician. Appellant did not submit any additional information.

By decision dated July 10, 2001, the Office denied appellant's claim on the grounds that she did not submit medical evidence sufficient to establish that the claimed medical condition was causally related to her federal employment.

By letter dated August 10, 2001, received by the Office on August 20, 2001, appellant requested a review of the written record.

By decision dated September 13, 2001, the Office found that appellant's request for a review of the written record was untimely filed. The Office noted that her request was postmarked August 10, 2001, which was more than 30 days after the issuance of the Office's July 10, 2001 decision and that she was, therefore, not entitled to a review of the written record as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue could be equally well addressed through the reconsideration process by submitting additional evidence.

The Board finds that the case is not in posture for decision.

Section 8124(b)(1) of the Federal Employees' Compensation Act,¹ concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary." 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.² The Board has held that section 8124 provides the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing" and 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.³

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 of such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁴

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.⁵ 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 An abuse of

¹ 5 U.S.C. § 8124(b)(1).

² *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

³ *See Michael J. Welsh*, 40 ECAB 994; 20 C.F.R. § 10.131(b).

⁴ *Johnny S. Henderson*, 34 ECAB 216 (1982).

⁵ *Johnny S. Henderson*, *supra* note 4; *Herbert C. Holley*, 33 ECAB 140 (1981); *Rudolph Berrmann*, 26 ECAB 354 (1975).

⁶ *Herbert C. Holley*, *supra* note 5.

discretion can be shown only through proof of manifest error, a manifestly unreasonable exercise of judgment, prejudice, partiality, intentional wrong or action against logic.⁷

The Board finds that the Office abused its discretion in denying appellant's request for a review of the written record by an Office hearing representative.

In this case, it appears that the date listed by the Office as the date of issuance of its merit decision denying appellant's claim for benefits July 10, 2001 is in error. This error is indicated by the fact that the memorandum in support of the decision is cosigned by the senior claims examiner and dated July 16, 2001.⁸ Based on these facts, therefore, which suggest that the Office's merit decision was not issued until at least July 16, 2001, the Office hearing representative erred in finding that appellant failed to request a review of the record within 30 days and in denying her request.

Accordingly, as appellant's claim before the Office is still pending, it has not been fully adjudicated. Thus, it is premature for the Board to determine the merits of this case. The decision of the Office hearing representative dated September 13, 2001 is, therefore, set aside and the case is remanded to the Branch of Hearings and Review, so that an Office hearing representative may conduct a review of the written record.

The decision of the Office of Workers' Compensation Programs' hearing representative dated September 13, 2001 is set aside and the case is remanded to the Office hearing representative for a review of the written record.

Dated, Washington, DC
October 25, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁷ See *Sherwood Brown*, 32 ECAB 1847 (1981).

⁸ Appellant contends on appeal that, although the copy of the decision in the case record indicates that the decision was issued on July 10, 2001, the copy of the decision mailed to her by the Office has July 16, 2001 crossed out, with the date of July 10, 2001 penned over it; she attached what she purports is a copy of this decision to her appeal. She also attached a copy of an envelope, which allegedly showed that her letter requesting a review of the written record is postmarked July 17, 2001.