

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENDALL CONDUFF and DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS, SHIPROCK AGENCY, TOHAALI
COMMUNITY SCHOOL, Newcomb, NM

*Docket No. 02-974; Submitted on the Record;
Issued April 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

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

On August 30, 1998 appellant, then a 61-year-old teacher, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on August 28, 1998 a door slammed shut on her right little finger, thereby cutting off the end of the finger. By letter dated January 29, 1999, the Office accepted appellant's claim for traumatic amputation distal phalanx right fifth finger.

Meanwhile, on January 8, 1999 appellant filed a claim for a schedule award (Form CA-7). On October 11, 2000 the Office issued a schedule award for a 31 percent impairment of appellant's right little finger. By letters dated January 31 and March 5, 2001, appellant protested the amount of the schedule award. By decision dated April 25, 2001, the Office denied appellant's request for review of the written record as it was not timely filed. The Office further reviewed appellant's request under its discretionary powers and further denied review for the reason that the issue could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

The only decision before the Board on appeal is the Office's decision dated April 25, 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 October 11, 2000 decision and the filing of appellant's

appeal, postmarked January 15, 2002, the Board lacks jurisdiction to review the October 11, 2000 decision.¹

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

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 review of the written record was untimely. Appellant's request for review of the written record was dated January 31, 2001 and was received by the Office on February 9, 2001 more than 30 days after the Office's October 11, 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 discretionary 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 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 she could have the matter further addressed by the Office through a reconsideration request along with the submission of new factual and medical evidence.

¹ The record also contains a March 14, 2002 decision, which the Office issued after appellant filed her appeal with the Board. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case and the Office decisions that change the status of the decision on appeal are null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990). The March 14, 2002 decision affirming its previous denial of appellant's request for a written review is, therefore, null and void.

² 5 U.S.C. § 8124(b).

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

⁴ *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 April 25, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 9, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member