

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GILBERT R. GARZA and DEPARTMENT OF THE ARMY,  
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

*Docket No. 03-454; Submitted on the Record;  
Issued April 16, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

The Office accepted that appellant sustained a right elbow contusion, right deltoid strain and right epicondylitis, causally related to an August 25, 1992 employment incident. By decision dated July 11, 2001, the Office terminated appellant's compensation effective July 14, 2001 on the grounds that appellant refused an offer of suitable work. In a decision dated November 6, 2001, the Office denied appellant's claim for a schedule award.

By letter dated June 6, 2002, appellant requested a hearing on his claim. In a decision dated September 9, 2002, the Office's Branch of Hearings and Review found that the request was untimely with respect to the July 11, 2001 decision and, therefore, appellant was not entitled to a hearing as a matter of right. The Branch of Hearings and Review further denied the request for a hearing on the grounds that the issue in the case could be addressed through the reconsideration process on the issue of suitable work.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.<sup>1</sup> As appellant filed his appeal on December 3, 2002, the only decision over which the Board has jurisdiction on this appeal is the September 9, 2002 decision denying his request for an oral hearing. The Board does not have jurisdiction over the November 6, 2001 Office decision.

The Board finds that the Office properly denied appellant's request for a hearing with respect to the July 11, 2001 Office decision.

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

Section 8124(b)(1) of the Federal Employees' Compensation Act provides in pertinent part:

“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 title 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.”<sup>2</sup>

As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>3</sup>

In this case, appellant requested a hearing in a letter dated June 6, 2002. Appellant did not identify a specific decision or issue. The Board notes that termination for refusal of suitable work decision was dated July 11, 2001 and the denial of the schedule award decision was dated November 6, 2001. The Branch of Hearings and Review determined that appellant was requesting a hearing on the July 11, 2001 decision. Since the hearing request was not filed within 30 days of the July 11, 2001 Office decision, it is untimely.

The Board has held that the Office, in its broad discretionary authority to administer the Act, has power to hold hearings in circumstances where no legal provision is made for such hearings and the Office must exercise its discretion in such circumstances.<sup>4</sup> In this case, the Office advised appellant that he could submit additional relevant evidence on the suitable work issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.<sup>5</sup>

It is noted that the Branch of Hearings and Review exercised its discretion only with respect to the July 11, 2001 Office decision. The most recent Office merit decision was the denial of a schedule award dated November 6, 2001. The Branch of Hearings and Review has not yet addressed the issue of whether the June 6, 2002 letter entitled appellant to an oral hearing on the issues presented in the November 6, 2001 decision. On return of the case record, the Branch of Hearings and Review should issue an appropriate decision.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> See *William F. Osborne*, 46 ECAB 198 (1994).

<sup>4</sup> *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>5</sup> See *Mary E. Hite*, 42 ECAB 641, 647 (1991).

<sup>6</sup> Upon return of the case record, the Office should issue an appropriate decision from the Branch of Hearings and Review with respect to a hearing on the November 6, 2001 Office decision.

The decision of the Office of Workers' Compensation Programs dated September 9, 2002 is affirmed.

Dated, Washington, DC  
April 16, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member