

resuming her former duties; therefore, the employing establishment provided limited-duty work effective November 18, 2000. In a decision dated January 18, 2001, the Office found that appellant's actual earnings as a modified mailhandler fairly and reasonably represented her wage-earning capacity. The Office also found that appellant had no loss of wages.

On September 19, 2002 appellant filed a claim for a schedule award. By decision dated November 27, 2002, the Office granted appellant a schedule award for a 10 percent impairment of both upper extremities. The Office based the awards on the October 3, 2002 report of its medical adviser. The awards covered a period of 62.4 weeks, beginning August 6, 2002 and continuing through October 16, 2003.

In a letter dated January 10, 2004, appellant advised the Office that she believed a mistake had been made in the calculation of her schedule award. She stated that while her doctor calculated a 20 percent impairment for each upper extremity, the Office had awarded only 10 percent for each upper extremity.

The Office responded in a January 21, 2004 letter and advised appellant that, if she disagreed with the amount of the award she should pursue her appeal rights that accompanied the November 27, 2002 decision.

On February 13, 2004 appellant requested an oral hearing. The Office denied her request in a decision dated March 11, 2004. The Office found that appellant's hearing request was untimely. The Office also advised that appellant could pursue the matter through the reconsideration process.

LEGAL PRECEDENT

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record.¹ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought or if the claimant has previously submitted a reconsideration request.² However, the Office has discretion to grant or deny a request that was made after this 30-day period.³ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁴

¹ See 20 C.F.R. § 10.615.

² 20 C.F.R. § 10.616(a) (1999). See 5 U.S.C. § 8124(b).

³ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁴ *Rudolph Bermann*, 26 ECAB 354 (1975).

ANALYSIS

Appellant's request for an oral hearing was dated February 13, 2004, which is more than 30 days after the Office's November 27, 2002 schedule award decision. As such, appellant is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that she could equally well pursue the matter through a request for reconsideration submitted to the district Office.⁵ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing on the issue of her entitlement to a schedule award.

CONCLUSION

The Board finds that the Office properly denied appellant's February 13, 2004 request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ *E.g., Jeff Micono*, 39 ECAB 617 (1988).