United States Department of Labor
Employees' Compensation Appeals Board

DELBERT B. HAZZARD, Appellant	)	
and	)	**Docket No. 04-259**
	)	**Issued: March 10, 2004**
DEPARTMENT OF DEFENSE, DEFENSE DISTRIBUTION CENTER, New Cumberland PA, Employer	)	

Appearances:
Delbert B. Hazzard, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 10, 2003 appellant filed a timely appeal from the September 26, 2003 decision of the Office of Workers' Compensation Programs denying his request for a review of the written record pursuant to 5 U.S.C. § 8124. Because more than one year has elapsed between the last merit decision dated December 6, 2000 and the filing of this appeal on November 10, 2003, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for a review of the written record pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On January 12, 1999 appellant, then a 59-year-old material handler, filed a traumatic injury claim alleging that on January 8, 1999 he injured his ribs on the left side when he slipped and fell on ice and snow in a parking lot. Appellant stopped work on January 8, 1999.

In a February 23, 1999 letter, the Office accepted appellant's claim for a contusion of the ribs. Appellant returned to full-time modified work on March 29, 1999. Subsequently, the Office expanded the acceptance of appellant's claim to include a fracture of the ribs and left rotator cuff tear. The Office authorized rotator cuff repair, which was performed on September 7, 1999. Appellant stopped work on September 7, 1999. Appellant returned to modified duty on December 13, 1999.

On June 9, 2000 appellant filed a claim for a schedule award. By decision dated December 6, 2000, the Office granted appellant a schedule award for a 49 percent impairment of the left arm.

In an undated letter postmarked in September 2003, received by the Office on September 24, 2003, appellant requested a review of the written record.[1] By decision dated September 26, 2003, the Office denied appellant's request for a review of the written record as untimely filed. The Office explained that appellant's request was received more than 30 days after the issuance of the December 6, 2000 decision and, therefore, he was not entitled to a hearing or a review of the written record as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue in his claim could be addressed by requesting reconsideration and submitting evidence not previously considered by the Office to establish that he more impairment of his left arm.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... 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."[2] Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[3] The request "must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision, for which

[1] The Board notes that the postmark date on the envelope containing appellant's request for a review of the written record is unclear.

[2] 5 U.S.C. § 8124(b)(1).

[3] 20 C.F.R. § 10.615.

a hearing is sought."[4] The regulations also provide that "the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."[5]

ANALYSIS

Appellant's September 24, 2003 request for a review of the written record was made more than 30 days after the date of issuance of the Office's schedule award decision of December 6, 2000. Therefore, appellant is not entitled to a review of the written record as a matter of right. The Office properly found that appellant was not entitled to a review of the written record as a matter of right because his request for a review of the written record was not made within 30 days of the Office's decision.

While the Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right, the Office, in its decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for a review of the written record on the basis that his claim could be addressed through a reconsideration application. The Board has held that as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken, which are contrary to both logic and probable deduction from established facts.[6] In this case, the Office properly exercised its discretion in denying of appellant's request for a review of the written record.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a review of the written record pursuant to 5 U.S.C. § 8124.

[4] 20 C.F.R. § 10.616(a).

[5] *Id.*

[6] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member