United States Department of Labor
Employees' Compensation Appeals Board

FRANCES G. BROWN, Appellant	)	
and	)	**Docket No. 06-296**
	)	**Issued: May 12, 2006**
DEPARTMENT OF THE NAVY, NAVAL AVIATION DEPOT, NAVAL AIR STATION, Pensacola, FL, Employer	)	

Appearances:
Frances G. Brown, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 17, 2005 appellant filed an appeal of a May 6, 2005 decision of the Office of Workers' Compensation Programs which denied her request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the May 6, 2005 decision denying appellant's request for a record review. Because more than one year has elapsed between the last merit decision of the Office dated July 30, 1993 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

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

FACTUAL HISTORY

On May 7, 1993 appellant, then a 44-year-old supervisory staff accountant, filed a Form CA-1, traumatic injury claim, alleging that on July 1, 1992 she injured her face and head when

she fell to the floor at work. She stopped work that day and returned on May 3, 1993. By decision dated July 30, 1993, the Office denied the claim. On August 26, 1993 appellant requested a hearing. In a February 3, 1994 letter, an Office hearing representative noted that the evidence submitted with her hearing request was more relevant to employment-related stress and informed her that she should file an occupational disease claim in that regard.[1] She was asked if she wanted to withdraw her hearing request. Appellant did not respond. By letter dated March 22, 1994, the Office notified appellant that a hearing was scheduled for 2:00 p.m. on April 13, 1994 at the Pensacola Junior College, Pensacola, Florida. In an undated memorandum, the hearing representative noted that appellant wanted the hearing postponed. On April 7, 1994 appellant requested that it be cancelled. In a May 3, 1994 letter, the Office informed appellant that a hearing would be rescheduled. On November 16, 1994 the Office notified her that a hearing was scheduled for 1:30 p.m. on December 12, 1994 in Mobile, Alabama. On December 5, 1994 appellant again requested that the hearing be cancelled.

On July 2, 2003 appellant simultaneously requested a review of the written record and reconsideration by the Office. She submitted additional evidence.[2] In a decision dated May 6, 2005, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed.

LEGAL PRECEDENT

A 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. 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. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.[3] The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,[4] 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 Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[6]

[1] There is no evidence in the record that appellant filed an occupational disease claim for employment-related stress.

[2] The record before the Board does not contain a decision on appellant's request for reconsideration.

[3] *Claudio Vazquez*, 52 ECAB 496 (2001).

[4] 5 U.S.C. §§ 8101-8193.

[5] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[6] *Claudio Vazquez, supra* note 3.

ANALYSIS

The Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. The Office noted that two hearings scheduled in 1994 had been cancelled at her request, and there was no contact with the Office in the intervening years. The Office properly found that appellant was not entitled to a record review as a matter of right as her request, dated July 2, 2003, had not been made within 30 days of the July 30, 1993 decision.

The Office also has the discretionary power to grant a request for a written record review when a claimant is not entitled to such as a matter of right. In the May 6, 2005 decision, the Office properly exercised its discretion by briefly reviewing the evidence submitted with appellant's request and determining that, under the Act guidelines, appellant was not entitled to a review of the written record.

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.[7] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. The Office therefore properly denied her request.[8]

CONCLUSION

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

[7] *See Claudio Vazquez, supra* note 3; *Daniel J. Perea*, 42 ECAB 214 (1990).

[8] Appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the record is limited to that which was before the Office at the time of its final merit decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 6, 2005 be affirmed.

Issued: May 12, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board