

**United States Department of Labor
Employees' Compensation Appeals Board**

P.P., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER,
Leavenworth, KS, Employer**

**Docket No. 07-1045
Issued: September 5, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 7, 2007 appellant filed a timely appeal from an October 24, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying 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 decision denying review of the written record. As more than one year has elapsed between the filing of this appeal and the most recent merit decision of September 27, 2004, the Board lacks jurisdiction to review the merits of this case.¹

ISSUE

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

¹ 20 C.F.R. §§ 501.2(c); 501.3.

FACTUAL HISTORY

On December 4, 1997 appellant, then a 48-year-old medical clerk, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to factors of her federal employment. The Office accepted the claim, assigned file number 110162755, for bilateral wrist tendinitis. Appellant performed modified duties following her employment injury.

On November 17, 1999 appellant filed an occupational disease claim alleging that she sustained epicondylitis causally related to her employment. The Office accepted the claim, assigned file number 110173647, for right elbow tendinitis and bilateral lateral epicondylitis. She continued to work in a limited-duty capacity. The employing establishment was unable to provide appellant with limited-duty work beginning February 15, 2000. The Office began paying her compensation for total disability.

By decision dated March 5, 2002, the Office terminated appellant's compensation effective March 8, 2002 under file number 110173647 on the grounds that she refused suitable work pursuant to 5 U.S.C. § 8106. On March 19, 2002 appellant requested an oral hearing on the termination of her compensation. Following the July 31, 2003 oral hearing, in a decision dated September 29, 2003, the Office hearing representative affirmed the March 5, 2002 termination decision. The hearing representative issued the decision under file number 110162755. He noted that file number 110173647 was a subsidiary file. That decision is not presently before the Board.

In a decision dated February 9, 2004, the Office denied appellant's claim for a schedule award on the grounds that she refused suitable work under 5 U.S.C. § 8106. On March 8, 2004 she requested an oral hearing on the denial of her schedule award, which was held on July 22, 2004. By decision dated September 27, 2004, an Office hearing representative affirmed the February 9, 2004 decision denying her schedule award.

On September 8, 2005 appellant requested reconsideration of the September 27, 2004 decision and a new hearing. In a June 19, 2006 response, the Office noted that she requested both reconsideration and a hearing and provided information regarding the various types of appeal rights. By letter dated May 8, 2006, received by the Office on August 2, 2006, appellant requested a review of the written record in lieu of an oral hearing and argued that she was entitled to compensation for a loss of wage-earning capacity. By decision dated October 24, 2006, the Office denied appellant's request for review of the written record as she previously received hearings on the termination of her compensation under section 8106 of the Federal Employees' Compensation Act and the denial of her schedule award. The Office considered her request and determined that a second hearing would "serve no useful purpose."

LEGAL PRECEDENT

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of

issuance of the decision, to a hearing on his claim before a representative of the Secretary.”² 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.³

Section 10.615 of title 20 of the Code of Federal Regulations provides, “A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.”⁴ Section 10.616(a) further provides, “A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing 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 a hearing is sought.”⁵

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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing or when the request is for a second hearing on the same issue.⁶ The Office’s procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁷

ANALYSIS

By decision dated March 5, 2002, the Office terminated appellant’s compensation under section 8106 of the Act based on her refusal of suitable employment. She requested an oral hearing, which was held on July 31, 2003. In a decision dated September 29, 2003, the Office hearing representative affirmed the March 5, 2002 decision.

In a decision dated February 9, 2004, the Office denied appellant’s claim for a schedule award as she refused suitable work under section 8106 of the Act. Appellant requested an oral hearing, which was held on July 22, 2004. By decision dated September 27, 2004, the Office hearing representative affirmed the February 9, 2004 decision. On September 8, 2005 appellant requested reconsideration of the September 27, 2004 decision and an oral hearing. On May 8,

² 5 U.S.C. § 8124(b)(1).

³ *Frederick D. Richardson*, 45 ECAB 454 (1994).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ *See André Thyratron*, 54 ECAB 257 (2002).

⁷ *Sandra F. Powell*, 45 ECAB 877 (1994).

2006 she requested a review of the written record in lieu of an oral hearing and argued that she was entitled to compensation for a loss of wage-earning capacity.⁸

The Office properly determined that appellant was not entitled to a second hearing under section 8124 of the Act as a matter of right. A hearing takes the format of either an oral hearing or a review of the written record.⁹ As appellant previously received an oral hearing on both the termination of her compensation under section 8106 of the Act and the denial of her claim for a schedule award, she was not entitled to a subsequent review of the written record on either issue. The Board thus finds that the Office properly denied her request for a review of the written record as she had already received a hearing, in the form of an oral hearing, before the Office.¹⁰

The Office also exercised its discretion in further considering appellant's request for a review of the written record in its October 24, 2006 decision. The Office denied the hearing request on the basis that it would serve no useful purpose. 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 deductions from known facts.¹¹ There is no evidence in the case record that the Office abused its discretion in refusing to grant 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 under section 8124 of the Act.

⁸ It is unclear whether appellant wanted a review of the written record regarding the termination of her compensation or the denial of her schedule award claim.

⁹ 20 C.F.R. § 10.615.

¹⁰ See *André Thyratron*, *supra* note 6.

¹¹ *Delmont L. Thompson*, 51 ECAB 155 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 24, 2006 is affirmed.

Issued: September 5, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board