

By decision dated July 15, 2008, the Office accepted appellant's claim for noise-induced sensorineural bilateral hearing loss.

By decision dated January 12, 2009, the Office denied appellant's schedule award claim, finding that the evidence of record established that his employment-related hearing loss was not ratable.

On March 6, 2009 appellant requested review of the written record.

Finding that appellant's request for review of the written record was not filed within 30 days of its January 12, 2009 decision, by decision dated August 13, 2009, the Office denied the request. In exercising discretionary authority to grant an untimely request for review of the written record, it found that appellant could obtain further review of his claim by submitting additional evidence and requesting reconsideration by the Office.

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.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. 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.² The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act 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.³ 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.⁴

If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, etc.), the Branch of Hearings and Review will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons.⁵

¹ 5 U.S.C. § 8124(b)(1).

² *Claudio Vazquez*, 52 ECAB 496 (2001).

³ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁴ *Claudio Vazquez*, *supra* note 2.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 2005).

ANALYSIS

Appellant's request for review of the written record was dated March 6, 2009, more than 30 days after the January 12, 2009 decision. Therefore, his request was not timely and appellant was not entitled to a review of the written record as a matter of right.⁶

The Branch of Hearings and Review, in its August 13, 2009 decision, properly exercised its discretion in determining whether to grant appellant's review of the written record and noted that it had reviewed his claim and found that the issues involved in his claim could be equally addressed through submitting additional evidence and requesting reconsideration. Thus, the Board finds that the Branch of Hearings and Review did not abuse its discretionary authority in denying appellant's untimely request for review of the written record.

CONCLUSION

The Board finds that the Office properly denied appellant's review of the written record as untimely under 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁶ 20 C.F.R. § 10.616(a).