



## **FACTUAL HISTORY**

On July 23, 1992 appellant, then a 35-year-old maintenance laborer, filed a traumatic injury claim alleging that on that date he got on the elevator at work and injured his upper and lower back when the elevator missed the 4<sup>th</sup> floor and jammed between floors. By letter dated October 27, 1992, the Office accepted appellant's claim for thoracic and lumbar strain and sprain and paid wage-loss compensation for temporary disability from September 10, 1992 to May 3, 1993. Appellant returned to work full time in a light-duty capacity on May 4, 1993. The Office accepted appellant's claim for a recurrence of disability for intermittent periods in June and July 1993. Appellant returned to light-duty work full time on May 23, 1994.

On September 10, 1999 appellant filed a claim alleging a recurrence of the accepted injury on August 25, 1999. By decision dated December 6, 1999, the Office denied appellant's claim for a recurrence. By decision dated November 1, 2000 finalized November 6, 2000, the Office hearing representative affirmed the Office's December 6, 1999 decision denying the recurrence claim. Additionally, it found that appellant failed to establish a new injury.

In an undated letter to the Office's Branch of Hearings and Review received on September 9, 2009, appellant stated that he "would like to exercise" his appeal rights in the November 6, 2000 decision. He requested that it "reconsider the Dec[ember] 6, 1999 decision appeal and consider it as the timely appeal wa[i]ving all statutory limits in the November 6, 2000 decision..." Appellant reiterated his request "for reconsideration" and argued, *inter alia*, that there were due process violations and that there was illegal removal information in his government record, citing examples.

By decision dated December 10, 2009, the Office treated appellant's letter as a request for an oral hearing or review of the written record. It then denied appellant's request as it was untimely filed and further found that the issue could be resolved *via* reconsideration.

## **LEGAL PRECEDENT**

Section 8124(b) of the Act,<sup>2</sup> concerning a claimant's entitlement to a hearing before an Office representative, states: Before review under section 8128(a) of this title, a claimant ... 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.<sup>3</sup>

The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Id.* at § 8124(b)(1).

the request is filed within the requisite 30 days.<sup>4</sup> Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.<sup>5</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision. In its December 10, 2009 decision, the Office denied appellant's request for an oral hearing. However, after review of the appellant's request, the Board finds that he was not requesting an oral hearing. In fact, he had already had an oral hearing before the hearing representative on July 19, 2000. In his letter to the Branch of Hearings and Review, appellant specifically stated that he wished the Office "to reconsider the Dec[ember] 6, 1999 decision." Additionally, prior to listing what he contended were due process violations, *etc.*, appellant again requested "reconsideration." The Board concludes that appellant's undated letter to the Office, received on September 9, 2009, is a request for reconsideration. Thus, the Office should have treated appellant's letter as a request for reconsideration of the Office's decision of November 6, 2000.<sup>6</sup> Accordingly, this case is remanded for the Office to address his request for reconsideration, to be followed by any further development and the issuance of an appropriate decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>4</sup> *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>5</sup> *Id.*

<sup>6</sup> *See e.g., Lovell Sims*, Docket No. 05-1044 (issued September 15, 2005) wherein the Board set aside the Office's decision denying a request for review of the written record as untimely and remanded the case for proper consideration of appellant's reconsideration request. The Board found that although appellant's request was addressed to the Office's Branch of Hearings and Review, was mischaracterized by the Office and was indeed a request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 10, 2009 is set aside and the case remanded for further consideration consistent with this opinion.

Issued: October 19, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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