

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IOANE SANELE and DEPARTMENT OF THE NAVY, MOTOR
TRANSPORT DEPARTMENT -- MAINTENANCE DIVISION,
Camp Pendleton, CA

*Docket No. 98-2272; Submitted on the Record;
Issued April 5, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On June 21, 1995 appellant, then a 46-year-old heavy tire repairer, filed a notice of traumatic injury and claim for continuation of pay (Form CA-1) alleging that he injured his left foot and leg when he twisted it while stepping out of a truck at work.

By decision dated July 7, 1997, the Office terminated appellant's entitlement to compensation for partial disability, finding that appellant's actual earnings as a mailhandler represented his wage-earning capacity. By decision dated July 8, 1997, the Office awarded appellant compensation for a 32 percent impairment of the left leg. On June 2, 1998 appellant's compensation for permanent disability under the schedule ended.

In a note received by the Office on May 4, 1998, appellant requested a review of his claim, identifying the July 7, 1997 wage-earning capacity decision in his request to the Office.

In a decision dated May 27, 1998, the Office denied appellant's request, noting that a request for an oral hearing or a review of the written record must be made within 30 days after the issuance of the final decision by the Office and as appellant's request was not received until May 4, 1998, it was not filed within 30 days of the July 7, 1997 decision. Furthermore, the Office, exercising its discretion, considered appellant's request and further denied it for the reason that the case could be equally well addressed by requesting reconsideration from the district office.

The Board finds that the Office properly denied appellant's request for a review of the written record as untimely.¹

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 issuance of the decision to a hearing on his claim before a representative of the Secretary."² Section 10.131 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 by a representative of the Secretary.³ However, appellant is not entitled to a review on the record if the request is made more than 30 days after the issuance of the decision.⁴

In the instant case, appellant did not request review of the July 7, 1997 decision until May 4, 1998, well after the 30-day period in which appellant would have been entitled to a review on the written record.

Even when the request for review on the written record is not timely, the Office has discretion to grant the hearing request and must exercise that discretion.⁵

The Office's procedures concerning untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

"If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously considered, etc.), HR [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."⁶

In this case, the Office advised appellant that it considered his request and determined that his request was further denied for the reason that the issue in the case can equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which establishes that the actual wages as a material handler was not found to represent his wage-earning capacity. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from the established

¹ It is not clear from appellant's request for review whether he desires a hearing or a review of the written record. However, appellant's request is also untimely for entitlement to a hearing; *see* 20 C.F.R. § 10.131(a).

² 5 U.S.C. § 8124(b)(1).

³ 5 U.S.C. § 10.131(b).

⁴ *Id.*

⁵ *Cora L. Falcon*, 43 ECAB 915, 918 (1992).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(b)(3) (September 1988).

facts.⁷ There is no evidence of an abuse of discretion in the denial of the request for review on the written record in this case.

The decision of the Office of Workers' Compensation Programs dated May 27, 1998 is affirmed.

Dated, Washington, D.C.
April 5, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).