

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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| In the Case of: |) | |
| Michael Blake Runyon, D.P.M., |) | Date: November 25, 1997 |
| Petitioner, |) | |
| - v. - |) | Docket No. C-96-093 |
| The Inspector General. |) | Decision No. CR508 |

DECISION

I decide that I am without authority to hear and decide Petitioner's September 8, 1997 motion to reopen his case.

I. Background

On September 8, 1995, I issued a decision in the case of Michael Blake Runyon, D.P.M., DAB CR392 (1995). Subsequently, Petitioner Michael Runyon appealed that decision to the Departmental Appeals Board (DAB). On January 19, 1996, an appellate panel of the DAB remanded that case to me for further proceedings. Michael Blake Runyon, D.P.M., DAB No. 1555 (1996). I issued a decision on remand in that case on June 13, 1996 sustaining Petitioner's five-year exclusion. Michael Blake Runyon, D.P.M., DAB CR422 (1996).

On September 8, 1997, Petitioner wrote to the Civil Remedies Division of the DAB.¹ P. Ex. 1. Petitioner stated that his letter "serves as a MOTION TO REOPEN" his case because he had "several points to offer that will make a difference." Id. Petitioner's September 8, 1997

¹ Although Petitioner did not designate his September 8, 1997 letter as an exhibit, I have identified it as P. Ex. 1, because it appears to contain statements by Petitioner that Petitioner considers to be evidentiary. For purposes of making a record, I am receiving into evidence P. Ex. 1.

letter is a request that I reopen and revise my June 13, 1996 decision in his case.²

II. Applicable law

42 C.F.R. § 1005.4 enumerates the authority of the administrative law judge (ALJ) but contains no language relating specifically to an ALJ's authority to reopen and revise decisions already issued.

42 C.F.R. § 1005.20(d) provides that, unless the initial decision is appealed to the DAB, it will be final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If the service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

III. Issue, findings of fact and conclusions of law

The issue is whether I have authority to hear and decide Petitioner's September 8, 1997 request to reopen and revise my June 13, 1996 decision. In concluding that I do not have such authority, I make the following findings of fact and conclusions of law (Findings). These Findings address only the question of my authority to hear and decide Petitioner's September 8, 1997 request to reopen and revise my June 13, 1996 decision in Petitioner's case. I make no findings concerning the merits of Petitioner's September 8, 1997 request to reopen and revise my decision of June 13, 1996, inasmuch

² Prior to the body of Petitioner's September 8, 1997 letter, Petitioner referenced his letter as follows:

RE: Docket No. C-96-093
Decision NO. CR422
Dated: January 19, 1996

P. Ex. 1.

The decision issued by an appellate panel of the DAB, Michael Blake Runyon, D.P.M., DAB No. 1555 (1996), is dated January 19, 1996. However, my decision on remand, Michael Blake Runyon, D.P.M., DAB CR422 (1996), is dated June 13, 1996. Since my decision on remand is identified as docket number C-96-093, has decision number CR422, and is the last decision in Petitioner's case, I am assuming that Petitioner merely put the wrong date in his letter and that Petitioner is trying to reopen the June 13, 1996 decision on remand.

as I have no authority to do so. I discuss my Findings below, at Part IV of this decision.

Findings

1. A decision on remand was issued in Petitioner's case on June 13, 1996.

2. Petitioner made his September 8, 1997 request that I reopen and revise my June 13, 1996 decision more than 30 days after the date of the decision.

3. I do not have authority to hear and decide Petitioner's September 8, 1997 request to reopen and revise my June 13, 1996 decision in Petitioner's case under the regulations contained in 42 C.F.R. Part 1005.

IV. Discussion

The regulations that govern Petitioner's request to reopen and revise my June 13, 1996 decision are contained in 42 C.F.R. Part 1005. My authority to hear and decide Petitioner's September 8, 1997 request depends on the timing of Petitioner's request. For purposes of this decision, the relevant facts are that my decision on remand sustaining Petitioner's five-year exclusion was issued on June 13, 1996 and that Petitioner requested that I reopen and revise my June 13, 1996 decision by letter dated September 8, 1997. Thus, more than 30 days elapsed between the date of the June 13, 1996 decision and the date of Petitioner's September 8, 1997 letter requesting that I reopen and revise my June 13, 1996 decision.

There is no language in the regulations that specifically addresses the authority of an ALJ to reopen or revise an ALJ decision that was already issued. Additionally, under 42 C.F.R. § 1005.20(d), an initial decision by an ALJ becomes final and binding on the parties 30 days after the ALJ serves a copy of the decision on the parties unless the initial decision is appealed to the DAB.

This issue has been addressed previously in Keith O. Irby, DAB CR427 (1996) by ALJ Steven Kessel. As stated in Irby:

A logical reading of 42 C.F.R. §1005.20(d) is that it permits an administrative law judge to consider reopening and revising a decision during the 30-day time period prior to the decision becoming final and binding or during the dates between the date of

service of a decision on the parties and the date of appeal of that decision. However, it is also logical to read the regulations as precluding the administrative law judge from reopening or revising a decision after that decision becomes final and binding or after DAB appellate review is sought.

Id. at 5.

The September 8, 1997 letter by Petitioner requesting that I reopen and revise my decision of June 13, 1996, was not made within 30 days of my serving a copy of that decision on him. Therefore, under 42 C.F.R. Part 1005, I am without authority to hear and decide Petitioner's September 8, 1997 request to reopen and revise my June 13, 1996 decision.

IV. Conclusion

I conclude that I have no authority to hear and decide Petitioner's September 8, 1997 request that I reopen and revise my June 13, 1996 decision in his case. Therefore, I dismiss his request for a hearing.

/s/

Joseph K. Riotto
Administrative Law Judge