

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NANCY GREER, claiming as widow of THOMAS C. GREER and  
DEPARTMENT OF THE AIR FORCE, GEORGIA WING, CIVIL AIR PATROL,  
Cochran, Ga.

*Docket No. 96-1039; Submitted on the Record;  
Issued July 14, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits on June 15 and November 22, 1995.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on June 15 and November 22, 1995.

Appellant filed a claim on October 14, 1992 requesting compensation for the death of her husband, a former federal employee. By decision dated January 7, 1993, the Office denied appellant's claim finding that she had not established a causal relationship between the employee's death and his accepted employment injuries. Appellant requested an oral hearing and by decision dated December 3, 1993, the Branch of Hearings and Review denied appellant's claim. Appellant requested reconsideration on December 31, 1993 and May 8, 1994. By decisions dated April 29 and October 20, 1994, respectively, the Office denied modification of its prior decisions. Appellant requested reconsideration on March 20 and October 10, 1995 and by decisions dated June 15 and November 22, 1995, respectively, the Office declined to reopen appellant's claim for review of the merits.<sup>1</sup>

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the

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<sup>1</sup> Appellant requested review by the Board on February 6, 1996. As more than one year has elapsed since the Office's last merit decision on October 20, 1994, the Board does not have jurisdiction to review the merits of appellant's claim; *see* 20 C.F.R. § 501.3(d)(2).

Office.<sup>2</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.<sup>3</sup>

In her March 20, 1995 request for reconsideration, appellant stated that she based her request on a legal argument, that she needed a copy of the applicable regulations. Appellant submitted a copy of a letter addressed to her from the Office, as well as copies of letters she had previously submitted to the Office requesting copies of the Office's regulations. Appellant's request for the applicable regulations is not a relevant point of law or new legal argument not previously considered by the Office. Furthermore, the documents submitted by appellant had previously been reviewed or generated by the Office and were not relevant to the issue for which the Office denied appellant's claim, whether there was sufficient medical evidence to establish a causal relationship between the employee's death and his accepted employment-related injuries.

In her October 10, 1995 request for reconsideration, appellant alleged that there was sufficient medical evidence to establish that the employee's death was related to his federal employment. Appellant reviewed the medical evidence relating to her claim and provided citations to medical authority. As appellant is not a physician, her opinion on the causal relationship between the employee's accepted employment injuries and his death are not medical evidence and are therefore not relevant to the issue for which the Office denied her claim.<sup>4</sup> Appellant provided excerpts from medical periodicals in support of her claim. The Board has held that excerpts of medical publications are of no evidentiary value in establishing a claim as they are of general application and are not determinative as to whether specific conditions or disability were the result of the employment. This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on the causal relationship between a condition and specified employment injury.<sup>5</sup> As appellant did not submit an opinion from a physician applying an interpretation to the employee's case, this evidence has no probative value and is not relevant.

Appellant did not submit new legal argument nor new and relevant evidence sufficient to require the Office to reopen her claim for review of the merits.

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<sup>2</sup> 20 C.F.R. § 10.138(b)(1).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Arnold A. Alley*, 44 ECAB 912 (1993).

<sup>5</sup> *Harlan L. Soeten*, 38 ECAB 566, 567 (1987).

The decisions of the Office of Workers' Compensation Programs dated November 22 and June 15, 1995 are hereby affirmed.

Dated, Washington, D.C.  
July 14, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member