

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY JANE HAGER and U.S. POSTAL SERVICE,
POST OFFICE, Des Moines, Iowa

*Docket No. 97-2515; Submitted on the Record;
Issued June 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on July 9, 1997.

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 consideration of the merits.

Appellant filed a claim on January 18, 1989 alleging that she injured her back in the performance of duty. The Office accepted appellant's claim for mid back strain on February 28, 1989. On May 12, 1992 the Office accepted the additional condition of aggravation of degenerative disc disease, lumbar spine. The Office entered appellant on the periodic rolls on April 5, 1993. By decision dated July 21, 1995, the Office terminated appellant's compensation benefits effective August 20, 1995 finding that she had recovered from the January 19, 1989 employment injury. Appellant requested an oral hearing and by decision dated March 27, 1996, the hearing representative affirmed the Office's July 21, 1995 decision. Appellant and her attorney requested reconsideration on March 20 and 27, 1997, respectively, and by decision dated July 9, 1997, the Office denied the request for reconsideration finding that there was no relevant new evidence.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Inasmuch as appellant filed her appeal with the Board on July 26, 1997, the only decision properly before the Board is the Office's July 9, 1997 decision, denying appellant's request for reconsideration.

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

¹ 20 C.F.R. § 501.3(d)(2).

Office.² 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 reviewing the merits of the claim.³

In support of the requests for reconsideration, appellant and her attorney submitted a report dated March 21, 1997 from Dr. Sue A. Olmstead, an osteopath. Dr. Olmstead's report consists of a list of appellant's medical diagnoses and medications. She also provided the dates of appellant's magnetic resonance imaging (MRI) scans. Dr. Olmstead stated that appellant had not demonstrated significant improvement nor changes in her MRI scan. She stated that she could not recommend that appellant return to employment.

This report is not sufficient to require the Office to reopen appellant's claim for consideration of the merits as it is not relevant to the issue for which the Office terminated appellant's claim, whether she had any continuing disability or residuals causally related to her accepted employment injuries. Dr. Olmstead did not provide a history of injury nor did she provide an opinion on the causal relationship between appellant's diagnosed conditions and her accepted employment injury. For these reasons, the Office properly refused to reopen appellant's claim for consideration of the merits.

The decision of the Office of Workers' Compensation Programs dated July 9, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).