

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK RULE, claiming as widower of ELEANOR M. RULE and U.S. POSTAL SERVICE, POST OFFICE, Manhasset, NY

*Docket No. 00-352; Submitted on the Record;
Issued September 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.138.

On September 28, 1971 the employee, then a 46-year-old clerk, sustained a myocardial infarction, which the Office accepted as employment related. She received wage-loss compensation benefits as a result of her 1971 employment injury up until the time of her death on May 10, 1995. Appellant filed a claim for survivor's benefits (Form CA-5) on May 25, 1995, alleging that the employee's death due to an acute myocardial infarction on May 10, 1995 was causally related to her accepted employment injury of September 28, 1971.

The Office subsequently referred the case to its medical adviser who, in a report dated September 15, 1995, found that the employee's death on May 10, 1995 was not causally related to her 1971 employment injury. The Office medical adviser explained that the employee's 1971 myocardial infarction healed within a period of 3 to 6 months and had no direct relationship to her subsequent myocardial infarction some 24 years later, *i.e.*, in January 1995. He further noted that following her 1971 myocardial infarction, the employee suffered from coronary artery disease, congestive heart disease, chronic obstructive pulmonary disease and lung cancer, with a resulting right pneumonectomy.

Based on the findings of its medical adviser, the Office issued a decision on October 10, 1995 denying appellant's claim for survivor's benefits. This decision was subsequently affirmed by an Office hearing representative on June 10, 1996. The hearing representative found that appellant failed to provide sufficient rationalized medical opinion evidence addressing a causal relationship between the employee's death and her accepted myocardial infarction of September 28, 1971.

On April 1, 1997 appellant requested reconsideration. By decision dated June 20, 1997, the Office denied appellant's request for reconsideration. Pursuant to a June 8, 1999 Order

Remanding Case of the Board's, the Office reissued its June 20, 1997 decision on September 1, 1999.¹ Appellant subsequently filed an appeal with the Board on October 6, 1999.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.138.

Section 10.138(b)(1) of Title 20 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 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 the three requirements enumerated under section 10.138(b)(1), the Office will deny the application for review without reaching the merits of the claim.³

Appellant's April 1, 1997 request for reconsideration did not demonstrate that the Office erroneously applied or interpreted a point of law. Additionally, he did not advance a point of law or a fact not previously considered by the Office. Accordingly, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.138(b)(1). With respect to the third requirement, submitting relevant and pertinent evidence not previously considered, appellant submitted a newspaper clipping which explained that "'Myocardial infarction' is a fancy way of saying 'heart attack.'" This newly submitted evidence does not address the issue of whether there is a causal relationship between the decedent's 1971 employment injury and her death due to an acute myocardial infarction on May 10, 1995. Inasmuch as the evidence submitted on reconsideration is not relevant to the dispositive issue of causal relationship, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.138(b)(1).⁴

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.138(b)(1), the Board finds that the Office did not abuse its discretion in denying appellant's April 1, 1997 request for reconsideration.

¹ Docket No. 97-2885. The Director of the Office did not transmit the case record to the Board within the time specified in section 501.4 of the Board's *Rules of Procedure*, 20 C.F.R. § 501.4. Further, the Board notes that as the appeal in 97-2885 was filed more than one year following the June 10, 1996 decision, the Board did not have merit jurisdiction. *See* 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).

⁴ Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

The September 1, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
September 14, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member