

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY L. GASKINS and U.S. POSTAL SERVICE,
POST OFFICE, Sacramento, Calif.

*Docket No. 96-1147; Submitted on the Record;
Issued April 6, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration without review of the merits of the claim.

In the present case, appellant filed a claim on November 1, 1991, alleging that she sustained an emotional condition causally related to factors of her federal employment. By decision dated February 11, 1992, the Office denied the claim on the grounds that appellant had not submitted sufficient factual or medical evidence to establish her claim. Following requests for reconsideration, the Office reviewed the case on its merits and denied modification by decisions dated June 23, 1993 and August 31, 1994. Appellant again requested reconsideration by letter dated July 26, 1995. In a decision dated January 2, 1996, the Office denied the request for reconsideration without review of the merits of the claim.

The Board's jurisdiction is limited to review of final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on February 22, 1996, the only decision over which the Board has jurisdiction on this appeal is the January 2, 1996 decision denying her request for reconsideration.

The Board has reviewed the record and finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provides that a claimant may

¹ 20 C.F.R. § 501.3(d).

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

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 fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁴

In this case, the evidence submitted with the July 26, 1995 reconsideration request was previously of record, and therefore does not constitute new evidence. A November 19, 1991 report from Dr. John A. Tribbey, a psychiatrist, had previously been submitted, as well as an undated narrative statement from appellant. In the July 26, 1995 request for reconsideration, appellant reiterates her allegations that a supervisor had stated that she wanted appellant out of the work unit, and that appellant was subjected to sexual harassment. Appellant does not show that the Office has erroneously applied or interpreted a point of law, nor has she advanced a new and relevant point of law or fact. The Board finds that appellant did not meet the requirements of section 10.138(b)(1), and the Office did not abuse its discretion in refusing to reopen the claim for merit review.

The decision of the Office of Workers' Compensation Programs dated January 2, 1996 is affirmed.

Dated, Washington, D.C.
April 6, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).