

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY ANN CLER and DEPARTMENT OF THE NAVY,
COMMISSARY STORE, NAVAL AIR STATION, Moffett Field, Calif.

*Docket No. 95-2857; Submitted on the Record;
Issued February 3, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, 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 review of the merits on July 27, 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.

Appellant filed a claim on December 20, 1991 alleging that she developed an emotional condition due to factors of her federal employment. By decision dated September 30, 1992, the Office denied appellant's claim. Appellant requested an oral hearing and by decision dated August 9, 1993, the hearing representative denied appellant's claim. Appellant requested reconsideration and by decision dated February 23, 1994, the Office found that appellant had failed to establish that the incidents alleged were compensable factors of her federal employment. Appellant requested reconsideration on June 15, 1994 and the Office denied modification of its February 23, 1994 decision on August 1, 1994. Appellant again requested reconsideration on June 9, 1995 and by decision dated June 27, 1995, the Office denied appellant's request for review of the merits.

As the most recent decision on the merits, the August 1, 1994 decision, was issued more than one year prior to the date of appellant's appeal to the Board on August 15, 1995, the Board lacks jurisdiction to review the merits of the claim.¹ The only decision over which the Board has jurisdiction is the June 27, 1995 decision denying appellant's request for reconsideration.

Appellant, through her representative, requested reconsideration on June 9, 1995.

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

¹ See 20 C.F.R. § 501.3(d)(2).

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 these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³

In this case, appellant did not submit relevant new evidence, advance a point of law or fact not previously considered nor show that the Office improperly applied or interpreted a point of law. Appellant's request for reconsideration was not accompanied by any additional evidence or argument. As appellant did not comply with the requirements of section 10.138(b)(2), the Office properly declined to reopen her claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated June 27, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 3, 1998

George E. Rivers
Member

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).