

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIET C. WONG and DEPARTMENT OF THE INTERIOR,
GEOLOGICAL SURVEY, Menlo Park, Calif.

*Docket No. 97-295; Submitted on the Record;
Issued November 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for merit review of her claim under 5 U.S.C. § 8128 constituted an abuse of discretion.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in this case.

In the present case, the Office has accepted that appellant, a geologist, sustained a cervical strain as a result of her employment duties from June 1 to 19, 1992. The Office accepted that appellant's injury occurred between June 1 and 19, 1992 while she was engaged in sawing rocks. Appellant had alleged that she had sustained shoulder and arm pain on June 19, 1992 while guiding rocks through a saw. Appellant thereafter submitted evidence that she had other medical conditions including unstable ligaments, bilateral wrist sprains, possible carpal tunnel syndrome, eye strain and or pain in the right eye, and chronic headache which she alleged were causally related to the accepted employment injury. By decision dated July 28, 1993, the Office denied appellant's claim for benefits on the grounds that the weight of the medial evidence established that appellant's current conditions were unrelated to her work-related injury of June 16, 1992 and that she had been physically able to return to work as of February 22, 1993. The Office denied modification of this decision after merit review on January 6, April 4, July 19, 1994, and July 10, 1995. The Office denied appellant's applications for review, without merit review, on April 20 and October 19, 1995 and July 16, 1996. As the Board only has jurisdiction to review decisions of the Office issued within one year of the date that the appeal was filed, and as this appeal was filed on October 15, 1996, the Board's jurisdiction is limited to review of the Office's October 19, 1995 and July 16, 1996 nonmerit decisions.¹

¹ 20 C.F.R. § 501.4(d).

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations² provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and 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. Section 10.138(b)(2)³ provides that any application for review of the merits of the claim which 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.

In her September 14, 1995 request for reconsideration, appellant submitted a statement wherein she explained her work activities in great detail. Essentially appellant alleged that she sustained a cumulative work injury from repetitive activities which she performed for two years prior to 1992. Appellant explained that these activities placed her in poor postural or unsafe positions and applied heavy pressure or impact to her hands, wrists, arms, and shoulders. Appellant outlined an occupational injury sustained from 1990 to 1992. Appellant stated that her neck condition greatly improved when she stopped working on September 22, 1992. Appellant did not submit any further medical evidence in support of her claim. Appellant's allegations in her September 14, 1995 request for reconsideration did not address by point of law or new evidence whether she had continuing disability after 1993 causally related to her injury of June 1 to 19, 1992. In fact appellant acknowledged that her accepted cervical condition had improved substantially after September 1992. Rather, appellant's September 14, 1995 allegations outlined a different claim for occupational injury. The Office therefore found that appellant's allegations were irrelevant to the claim at hand. The record does not indicate that appellant has filed a formal claim for occupational injury from 1990 and therefore such claim is not before the Board at this time.

On May 28, 1996 appellant again requested that the Office reconsider her case. In support of this request for reconsideration appellant submitted a March 5, 1996 report from Dr. F. Dee Filgas, Board-certified in internal medicine. In this report, Dr. Filgas stated that he agreed with appellant's treating physician's diagnoses of cumulative injury syndrome with residual somatic disruption in the upper cervical spine, subsequent ulnar shoulder and arm mechanic with a pronated posturing mechanism, an impeded forearm and wrist hand mechanic, and myofascial pain syndrome. Dr. Filgas then stated: "the question arises of whether this could be a stress-related condition and therefore related to the injury to the neck and upper extremities?" Dr. Filgas did not, however, offer any opinion as to whether such conditions were related to appellant's June 19, 1992 employment injury. As his report did not address the relevant issue at hand, whether appellant's continuing condition was causally related to the accepted employment injury, his report was irrelevant. The Office therefore properly determined that Dr. Filgas' report did not constitute new and relevant evidence, which would require a merit review.

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2)

As appellant's requests for reconsideration dated September 14, 1995 and May 28, 1996 did not show that the Office erroneously applied or interpreted a point law, or advance a point of law or fact or previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office did not abuse its discretion in this case by denying appellant's requests for reconsideration on October 19, 1995 and July 16, 1996.

The decisions of the Office of Workers' Compensation Programs dated October 19, 1995 and July 16, 1996 are hereby affirmed.

Dated, Washington, D.C.
November 9, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member