

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CANDICE A. BROWN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Salem, Va.

*Docket No. 97-654; Submitted on the Record;  
Issued November 3, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on August 26, 1996.

On March 30, 1995 appellant, then a 45-year-old medical records technician, filed a notice of occupational disease alleging that she developed a stress and anxiety-related emotional condition in the course of her federal employment duties.

In a decision dated July 24, 1995, the Office denied appellant's claim on the grounds that appellant did not establish any compensable employment factors under the Federal Employees' Compensation Act and, therefore, did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. The Office did not address the medical evidence.

By letter dated July 23, 1996, appellant's counsel requested reconsideration of the Office's July 24, 1995 decision and stated that additional supporting medical evidence would be submitted as soon as they became available.

By letter dated August 12, 1996, the Office informed appellant's counsel that there did not exist in the file a written release authorizing counsel to act on appellant's behalf and requested that one be submitted.

On August 20, 1996 appellant's counsel submitted the requested written release. Appellant's counsel did not submit any additional factual or medical evidence in support of the reconsideration request.

In a decision dated August 26, 1996, the Office denied appellant's request for reconsideration because it did not clearly identify the grounds upon which reconsideration was requested and neither raised substantive legal questions nor included new and relevant evidence, and was therefore insufficient to warrant a review of the prior decision. The Office's decision

included a notification to appellant that an appeal to the Employees' Compensation Appeals Board was her only right of appeal.

By letter postmarked November 20, 1996, appellant filed the instant appeal.

The only decision before the Board on this appeal is that of the Office dated August 26, 1996 in which it declined to reopen appellant's case on the merits as she failed to submit new relevant and pertinent evidence or raise legal arguments not previously considered. As more than one year elapsed from the date of issuance of the Office's last merit decision on July 24, 1995, and November 20, 1996, the date of the filing of appellant's appeal, the Board lacks jurisdiction to review that decision.<sup>1</sup>

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on August 26, 1996.

Under section 8128(a) of the Act,<sup>2</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,<sup>3</sup> which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;  
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.<sup>4</sup>

Appellant's letter requesting reconsideration did not contain any legal arguments and was unaccompanied by any new evidence. As appellant failed to submit new relevant and pertinent evidence not previously reviewed by the Office, and failed to raise any error of fact or law in the prior decision, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated August 26, 1996 is hereby affirmed.

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.138(b)(1).

<sup>4</sup> 20 C.F.R. § 10.138(b)(2).

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member