

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUE V. SANDERS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Fort Lauderdale, Fla.

*Docket No. 97-1189; Submitted on the Record;
Issued November 25, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's November 29, 1996 request for reconsideration.

In a decision dated November 29, 1995, the Office denied appellant's claim of an employment-related emotional condition. The Office found that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. Specifically, the Office found that appellant had not implicated compensable factors of employment and had not established error or abuse in the administrative actions taken by the employing establishment.¹

In a letter postmarked November 29, 1996, appellant requested reconsideration of the Office's decision.² She submitted, in support thereof, an October 22, 1996 report from Dr. Patrice Gerard, a licensed psychologist. She also submitted a December 18, 1995 letter from an employing establishment claims manager, who notified appellant of the information that should be included in her claim under the Federal Tort Claims Act concerning an incident that occurred on April 14, 1994.

In a decision dated December 13, 1996, the Office denied appellant's November 29, 1996 request for reconsideration.

The Board finds that the Office properly denied appellant's request.

¹ Because appellant mailed her January 27, 1997 appeal more than one year after the Office's November 29, 1995 decision, the Board has no jurisdiction to review that decision. 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time).

² She also requested reconsideration of a decision in another claim relating to a traumatic injury, which is not the subject of this appeal.

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; (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.³ 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.⁴

Appellant has not attempted to show that the Office erroneously applied or interpreted a point of law, nor has she attempted to advance a point of law or a fact not previously considered by the Office. Accordingly, she may not obtain a merit review of her claim under the first or second requirement set forth above.

Appellant, instead, submitted a medical report and a letter concerning a different case. This evidence is irrelevant to the issue decided in the Office's November 29, 1995 decision. In that decision, the Office denied appellant's claim because she attributed her emotional condition to events or incidents that are not within the scope of coverage of the Federal Employees' Compensation Act or to harassment and discrimination that was not substantiated by the factual evidence. The October 22, 1996 report of Dr. Gerard has no bearing on the Office's November 29, 1995 decision and is therefore irrelevant. The December 18, 1995 letter from the employing establishment claims examiner also has no bearing on the Office's November 29, 1995 decision and is irrelevant. Because the evidence submitted in support of appellant's November 29, 1996 request for reconsideration fails to address the basis of the decision denying her claim, she may not obtain a merit review of her claim under the third requirement set forth above.

As appellant's November 29, 1996 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review of her claim, the Board finds that the Office properly denied her request.

³ 20 C.F.R. § 10.138(b)(1).

⁴ *Id.* at § 10.138(b)(2).

The December 13, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
November 25, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member