

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of GREGORY A. RIGHTER and DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE, Yellowstone National Park, Wyo.

*Docket No. 97-426; Submitted on the Record;  
Issued September 8, 1998*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on July 12, 1996.

On June 2, 1994 appellant, then a 48-year-old motor vehicle operator, filed a notice of occupational disease alleging that he developed a stress and anxiety-related emotional condition in the course of his federal employment duties. Appellant submitted medical and factual evidence in support of his claim.

In a decision dated October 19, 1994, 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 his burden of proof to establish that he sustained an emotional condition in the performance of duty. The Office did not address the medical evidence.

On October 18, 1995 appellant's counsel requested reconsideration of the Office's October 19, 1994 decision and further requested additional time to submit supporting evidence.

By letter dated October 25, 1995, 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 June 14, 1996 appellant's counsel renewed his earlier request for reconsideration, on behalf of appellant, of the Office's October 19, 1994 decision. Appellant's counsel included copies of the requested written release and apologized for the delay explaining that the Office's October 25, 1995 request had gone astray. Appellant's counsel did not submit any additional factual or medical evidence in support of the reconsideration request.

In a decision dated July 12, 1996, the Office denied appellant's request for reconsideration because appellant's request 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 his only right of appeal.

By letter postmarked October 10, 1996, appellant filed the instant appeal.

The only decision before the Board on this appeal is that of the Office dated July 12, 1996 in which it declined to reopen appellant's case on the merits as he 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 October 19, 1994, and October 10, 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 July 12, 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 not accompanied 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.

---

<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).

The decision of the Office of Workers' Compensation Programs dated July 12, 1996 is hereby affirmed.<sup>5</sup>

Dated, Washington, D.C.  
September 8, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

---

<sup>5</sup> The Board notes appellant's appeal to the Board was accompanied by new evidence not previously contained in the file. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). The Board may not review new evidence on appeal which was not considered by the Office in the decision. Therefore, the Board is precluded from reviewing this evidence.