

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESPER L. GORE and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, Ohio

*Docket No. 97-1941; Submitted on the Record;
Issued April 7, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion pursuant to 5 U.S.C. § 8128 by denying merit review on December 3, 1996.

Appellant filed a notice of occupational disease and claim for compensation (Form CA-2) on March 27, 1996 alleging that on July 1, 1983 he first realized that his inguinal hernia, hyperpituitarism, acromegaly, hypogonadism, hypertension and unstable blood pressure were due to his federal employment. Appellant last worked at the employing establishment on October 9, 1992, subsequently received disability retirement from the Office of Personnel Management.

By decision dated May 1, 1996, the Office found that appellant's claim was untimely filed as he did not file the claim until March 27, 1996, which was more than three years since he last worked at the employing establishment in October 1992. In addition, the Office found that appellant was aware of the connection between his illness and his federal employment in 1983.

In a letter dated May 30, 1996, appellant requested reconsideration of the denial of his claim and submitted medical evidence in support of his claim.

By nonmerit letter decision dated June 17, 1996, the Office denied appellant's reconsideration request as he did not raise substantive legal questions nor include new and relevant evidence.

In a letter dated October 25, 1996, appellant requested reconsideration and submitted medical reports dating to 1988 in support of his request.

In a nonmerit decision dated December 3, 1996, the Office denied appellant's reconsideration request as the evidence submitted was irrelevant as the Office had denied his claim because it was not timely filed.

The Board finds that the Office did not abuse its discretion by denying merit review on June 17 and December 3, 1996.

The Office's regulations at 20 C.F.R. § 10.138(b)(1) provide that a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. 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.¹

Appellant did not submit any evidence showing he timely filed his claim in support of his May 30 and January 6, 1996 request for reconsideration. Appellant submitted medical records dating to 1988. This evidence is irrelevant as it fails to address the issue of whether appellant timely filed his claim. The Office properly determined that these records were not relevant to the issue of a timely claim. As appellant did not meet the requirement of 20 C.F.R. § 10.138(b), the Office did not abuse its discretion by denying review.

The decisions of the Office of Workers' Compensation Programs dated December 3 and June 17, 1996 are hereby affirmed.

Dated, Washington, D.C.
April 7, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹ 20 C.F.R. § 10.138(b)(2); *Norman W. Hanson*, 45 ECAB 430 (1994).