

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LELIA J. PAYNE and DEPARTMENT OF THE AIR FORCE,
KEESLER AIR FORCE BASE, Biloxi, MS

*Docket No. 97-1650; Submitted on the Record;
Issued August 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

This is the fourth appeal in this case.¹ On April 16, 1959 appellant sustained an injury to the back and a contusion to the left knee. By decision dated January 19, 1976, appellant's claim for compensation was rejected by the Office on the grounds that her disability on or after May 6, 1959 was not due to her employment injury. By order dated April 27, 1976, upon a motion by the Director, the Board remanded the case for further development on the issue of whether appellant had any disability resulting from an aggravation of a preexisting condition. By decision and order dated August 24, 1977, the Board affirmed the Office's February 1, 1977 decision in which the Office denied appellant's claim for disability subsequent to April 15, 1960. By decision and order dated July 29, 1981,² the Board affirmed the Office's April 9, 1981 decision in which the Office denied appellant's request for reconsideration. The facts of this case are more fully set forth in the Board's prior decisions.

By decision dated August 31, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

By letter dated April 11, 1996, submitted through her representative, appellant requested reconsideration of the Office's August 31, 1995 decision and submitted additional evidence.

In a letter dated October 25, 1995, Sharon R. McGeeney, D.O., related that appellant had been a patient since September 7, 1990 and had been treated for back pain with episodes of neuropathy secondary to an L4-5 degenerative disc disease and had undergone surgery earlier that year. She stated:

¹ See Docket No. 76-204; Docket No. 77-334; Docket No. 81-1163.

² See Docket No. 81-1163.

“Review of [appellant’s] history -- shows [that appellant] has suffered continued back pain. There is a question in my mind if the original accident of ‘[19]59’ may have contributed to her back pain over the years. After reviewing [a previous physician’s report] I feel there is some connection between the initial injury and her continued symptoms.”

By decision dated June 3, 1996, the Office denied appellant’s request for reconsideration.³

The Board finds that the Office did not abuse its discretion in denying appellant’s request for reconsideration.

Section 10.138(b)(1) 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; or (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.⁴ 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵

In this case, appellant did not show that the Office erroneously applied or interpreted a point of law. Nor did she advance a point of law or a fact not previously considered by the Office. She submitted an October 25, 1995 report from Dr. McGeeney who stated that she felt there was some connection between appellant’s episodes of neuropathy secondary to degenerative disc disease and her 1959 employment injury. However, she failed to explain how this condition was causally related to appellant’s employment injury which occurred 36 years earlier. Therefore, this report does not constitute relevant and pertinent evidence not previously considered by the Office and the Office did not abuse its discretion in denying appellant’s request for reconsideration.

³ The Board notes that appellant submitted additional evidence subsequent to the issuance of the Office’s June 3, 1996 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

The June 3, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 19, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member