

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEIDRE Y. PARKER and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Kansas City, Mo.

*Docket No. 97-1261; Submitted on the Record;
Issued February 11, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to require merit review of the claim.

In the present case, appellant filed a claim alleging that she sustained injuries on April 28, 1994 when she slipped and fell while in the performance of duty. By decision dated September 14, 1994, the Office denied the claim on the grounds that the medical evidence was insufficient to establish an injury in the performance of duty. In a decision dated January 23, 1996, an Office hearing representative affirmed the denial of the claim.

In a letter dated October 3, 1996, appellant requested reconsideration of her claim. By decision dated December 31, 1996, the Office determined that the request for reconsideration was insufficient to reopen the case for review of the merits of the claim.

The jurisdiction of the Board is limited to final Office decisions issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on February 14, 1997, the only decision over which the Board has jurisdiction on this appeal is the December 31, 1996 Office decision denying the request for reconsideration.

The Board finds that the Office properly determined that appellant's request for reconsideration was not sufficient to require a merit review of the claim under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provides that a claimant may

¹ 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of

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 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) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁴

In the present case, appellant did not submit any additional evidence with her request for reconsideration. The underlying basis for the denial of her claim was the lack of sufficient medical evidence to establish the claim. Appellant did not submit new and relevant medical evidence, did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or act not previously considered. Accordingly, the Board finds that under 20 C.F.R. § 10.138(b)(2) she is not entitled to a review of the merits of the claim.

The decision of the Office of Workers' Compensation Programs dated December 31, 1996 is affirmed.

Dated, Washington, D.C.
February 11, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

compensation at any time on his own motion or on application.”)

³ 20 C.F.R. § 10.138(b)(1).

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