

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA OJO and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Doraville, Ga.

*Docket No. 97-593; Submitted on the Record;  
Issued January 8, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, 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 warrant merit review of the claim.

The case has been before the Board on two prior appeals. In a decision dated July 6, 1995, the Board affirmed decisions of the Office dated February 15, 1994 and October 4, 1993, on the issue of whether appellant had established an employment-related disability commencing May 2, 1992.<sup>1</sup> With respect to continuing medical benefits, the Board found that the Office had not met its burden of proof to terminate entitlement to medical benefits. By order dated August 29, 1996, the Board granted the Director's motion to remand on the grounds that appellant's November 16, 1995 request for reconsideration was timely and, therefore, an appropriate decision under 20 C.F.R. § 10.138(b)(1) should be issued.<sup>2</sup>

In a decision dated October 29, 1996, the Office denied appellant's request for reconsideration without merit review of the claim.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.<sup>3</sup> Since appellant filed her appeal on November 20, 1996, the only decision over which the Board has jurisdiction on this appeal is the October 29, 1996 decision, denying her request for reconsideration.

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

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<sup>1</sup> Docket No. 94-1986.

<sup>2</sup> Docket No. 96-1146. The Office had issued a January 2, 1996 decision finding that appellant's request for reconsideration was untimely.

<sup>3</sup> 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's 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 fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> 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.<sup>6</sup>

In this case, the evidence submitted with the request for reconsideration consisted of a November 1, 1995 report from Dr. Eddie L. Whitehead, an internist. Dr. Whitehead stated in pertinent part that appellant "definitely has carpal tunnel syndrome of the hands bilaterally. I also feel that this is a direct result of her previous employment as a data entry specialist. As you know, in the majority of cases carpal tunnel syndrome is a result of repetitive hand and wrist movement, which happens when typing on a keyboard."

The Board finds that this report does not constitute new and relevant evidence under section 10.138(b)(1)(iii). Dr. Whitehead had previously opined in a February 5, 1992 report, that appellant had carpal tunnel syndrome that was causally related to her employment. The Office accepted that appellant sustained an aggravation of carpal tunnel syndrome. In a report dated February 21, 1993, Dr. Whitehead had opined that there was a permanent aggravation of appellant's condition, an opinion which the Board noted in its July 6, 1995 decision, to support the finding that the Office had not met its burden to terminate medical benefits.

The underlying adverse decision in this case concerns the issue of whether appellant had an employment-related disability on or after May 2, 1992, the date she stopped working. On this issue Dr. Whitehead offers no opinion or discussion in his November 1, 1995 report. Since Dr. Whitehead does not provide any new evidence regarding the relevant issue, his report is not sufficient to require a merit review of the case. Appellant has not met any of the requirements of section 10.138(b)(1) and, therefore, the Office properly denied his request for reconsideration.

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<sup>4</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

<sup>5</sup> 20 C.F.R. § 10.138(b)(1).

<sup>6</sup> 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated October 29, 1996 is affirmed.

Dated, Washington, D.C.  
January 8, 1999

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member