

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BONNIE S. CONET and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Chicago, Ill.

*Docket No. 96-1814; Submitted on the Record;  
Issued July 8, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on February 23, 1996.

On September 30, 1994 appellant, then a 38-year-old file clerk, filed a claim for traumatic injury alleging that she suffered a severe allergic reaction on September 27, 1994 when toxic fumes and smoke from an outside fire entered the air units of her work station during the course of her federal employment. Appellant stated that the fumes and smoke caused severe itching, a rash and a low grade fever. She further stated that she injured the front and back of both legs. Appellant stopped working on September 30, 1994 and returned on November 14, 1994. An employing establishment supervisor indicated that he was aware of odor from a fire two or three blocks away, but he did not think it was debilitating.

Appellant subsequently submitted an October 3, 1994 certificate signed by Dr. B.P. Atlas, a physician Board-certified in internal medicine, indicating that appellant had been treated for an allergic reaction.

On December 2, 1994 the Office requested additional evidence, including a detailed narrative report addressing the relationship between the diagnosed condition and appellant's federal employment.

On November 12, 1994 Dr. Atlas completed a duty status report indicating only that appellant had an allergic reaction and dermatitis, and that she could return to work on November 14, 1994.

By decision dated January 24, 1995, the Office denied appellant's claim because fact of injury was not established. In an accompanying memorandum, the Office stated that there was conflicting evidence on whether the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office then noted that the record was devoid of any

evidence establishing a causal relationship between the claimed condition and the September 27, 1994 injury.

On January 24, 1996 appellant's representative requested reconsideration without offering any argument or new evidence.

By letter decision dated February 23, 1996, the Office declined to reopen the case for a merit review because the January 24, 1996 letter from appellant's representative failed to offer argument and did not include new evidence.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed her appeal on May 21, 1996, the only decision properly before the Board is the Office's February 23, 1996 decision declining to reopen the case for a merit review.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on February 23, 1996.

Under section 8128(a) of the Federal Employees' Compensation 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>

In the instant case, appellant failed to offer any argument or submit any evidence in support of her request for reconsideration. The letter submitted by appellant's representative simply requested reconsideration. As appellant failed to submit any new relevant and pertinent evidence, the Office did not abuse its discretion by refusing to reopen appellant's claim for a review of the merits.

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<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 decisions of the Office of Workers' Compensation Programs dated February 23, 1996 is affirmed.

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

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member