

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERCED CALDERON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Los Angeles, Calif.

*Docket No. 97-1249; Submitted on the Record;
Issued March 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for merit review.

In a prior appeal, the Board granted the Director's motion to remand the case on the grounds that appellant's request for reconsideration was timely, contrary to the Office's January 23, 1996 decision.¹ By decision dated January 7, 1997, the Office determined that appellant's timely request for reconsideration was insufficient to warrant merit review of the claim.

In the present case, the record indicates that appellant had filed a claim for an emotional condition resulting from an alleged verbal altercation with his supervisor on July 26, 1989. The Office denied the claim by decision dated January 7, 1993. The denial was affirmed by a hearing representative in a decision dated October 29, 1993. In a decision dated January 3, 1995, the Office reviewed the case on its merits and denied modification.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.² Since appellant filed his appeal on February 26, 1997, the only decision properly before the Board on this appeal is the January 7, 1997 decision denying his request for reconsideration.

The Board has reviewed the record and finds that the Office properly refused to reopen appellant's case for merit review.

¹ Docket No. 96-145 (issued December 2, 1996).

² 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,³ 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.⁴ 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.⁵

The underlying basis for the denial of the claim was that appellant had not established a compensable factor of employment with respect to the July 26, 1989 incident.⁶ In order to require the Office to reopen the claim for merit review, he must meet one of the standards under section 10.138(b)(1). Appellant has not submitted any new and relevant evidence or argument to the issue presented. The alleged events of July 26, 1989 have not been accepted as factual, and appellant offered no pertinent evidence not previously considered. He has submitted statements alleging error or abuse by the employing establishment, but this does not represent a new argument, nor has he submitted new and relevant evidence on the issue of error or abuse.⁷

The Board finds that appellant's request for reconsideration did not satisfy any criteria set forth in section 10.138(b)(1). Accordingly, he is not entitled to a merit review of his claim and the Office properly denied his January 2, 1996 request for reconsideration.

³ 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.")

⁴ 20 C.F.R. § 10.138(b)(1).

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

⁶ Appellant must first establish a compensable factor of employment, and then the medical evidence is considered on the issue of causal relationship between the compensable factor and a diagnosed emotional condition; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ As the Office indicated in its prior decisions, administrative actions by the employing establishment are compensable factors only if error or abuse is established; *see Sharon R. Bowman*, 45 ECAB 187 (1993).

The decision of the Office of Workers' Compensation Programs dated January 7, 1997 is affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member