

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNETT G. JENKINS and U.S. POSTAL SERVICE, MOUNT VERNON
DISTRIBUTION CENTER, Mount Vernon, N.Y.

*Docket No. 97-1419; Submitted on the Record;
Issued March 8, 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 by refusing to reopen appellant's case for a merit review of her claim.

On September 9, 1993 appellant, then a 38-year-old postal clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on September 1, 1993, while seated at her work station, she was struck on the left side of her neck and back when a coworker inadvertently dropped a stack of cardboard trays on her. Appellant ceased working on September 3, 1993 and returned to work on November 15, 1993. In support of her claim, appellant submitted a December 7, 1993 report from Dr. Stanley M. Sonn, a chiropractor. Based on his December 7, 1993 examination of appellant, Dr. Sonn diagnosed bulging disc at L5-S1 level, misalignment of C5-6, consistent with subluxation and misalignment of normal lordotic curve. The doctor attributed appellant's condition to "repetitive movements to the joints of the neck [and] back involving movements of her both upper limbs [and] bending." Additionally, Dr. Sonn found appellant to be partially disabled and identified September 3, 1993, as the first date of disability.

By decision dated January 3, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the basis that the evidence failed to establish that she sustained a work related injury as alleged. In an accompanying memorandum, the Office explained that while the evidence of record supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, the medical evidence of record failed to establish that a medical condition resulted from the accepted trauma or exposure.

By letter dated January 24, 1994, appellant requested an oral hearing before the Office. The hearing was conducted on December 14, 1994. At the hearing, appellant's representative argued that the employment incident of September 1, 1993, aggravated a preexisting condition. The Office hearing representative allowed the record to remain open for an additional 30 days in

order for appellant to arrange for the submission of medical evidence explaining how the September 1, 1993 employment incident aggravated her preexisting condition.

In a decision dated February 1, 1995, the Office hearing representative found that appellant had not established that she sustained an injury in the performance of her duties on September 1, 1993. While the hearing representative accepted that the September 1, 1993, employment incident occurred as alleged, he found the medical evidence of record insufficient to establish a causal relationship between the incident and appellant's current condition. Additionally, in response to appellant's representative's assertion that the claim "should have been filed on an Occupational Form 2, since 1991 ...," the hearing representative advised appellant that she could file a Form CA-2 if she desired. Accordingly, the hearing representative affirmed the Office's January 3, 1994 decision denying compensation.

Appellant, through her representative, filed a timely request for reconsideration on February 1, 1996. In support of the request for reconsideration, appellant argued that the difficulties encountered in establishing her claim were due to the employing establishment's failure to process her various injuries in a proper manner. After detailing a history of at least four employment-related injuries, including a 1991 diagnosis for bilateral carpal tunnel syndrome, appellant argued that her various injuries were related and, in fact, were recurrences of a prior employment-related disability. Appellant, however, did not submit any new evidence relevant to the issue of causal relationship. On March 11, 1996 the Office denied appellant's request for a merit review of her claim on the basis that the evidence submitted in support of the request for review was of a nature not relevant to the denial and therefore, insufficient to warrant reconsideration of the prior decision. In an accompanying memorandum, the Office noted that appellant had not provided any new medical evidence or argument sufficient to require a merit review. By letter postmarked March 10, 1997, appellant filed a timely appeal with the Board.

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.¹ As appellant filed her appeal with the Board on March 10, 1997, the Board lacks jurisdiction to review the Office's most recent merit decision dated February 1, 1995. Consequently, the only decision properly before the Board is the Office's March 11, 1996 decision denying appellant's request for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.138.

Section 10.138(b)(1) of Title 20 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.² Section 10.138(b)(2) provides that when an application for

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1).

review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.138(b)(1), the Office will deny the application for review without reviewing the merits of the claim.³

In its March 11, 1996 decision, the Office correctly noted that other than stating that appellant's work affected her condition, appellant's representative did not provide any new medical evidence or argument sufficient to warrant a merit review. In fact, appellant did not submit any medical evidence on reconsideration relevant to the issue of causal relationship. Appellant also did not argue that the Office erroneously applied or interpreted a point of law and no such error is apparent.⁴ Consequently, appellant is not entitled to a review of the merits of her claim based on any of the above-noted requirements under section 10.138(b)(1). Inasmuch as appellant's February 1, 1996 request for reconsideration does not satisfy the requirements set forth for obtaining a merit review of her claim, the Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated March 11, 1996 is hereby affirmed.

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

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

³ 20 C.F.R. § 10.138(b)(2).

⁴ While appellant's representative expressed concerns about the processing of appellant's various claims, such concerns are insufficient to warrant merit review inasmuch as the dispositive issue in the case is medical in nature and must be addressed by new and relevant medical evidence.