

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA M. FLEMING and DEPARTMENT OF ENERGY,  
Washington, D.C.

*Docket No. 97-2245; Submitted on the Record;  
Issued May 24, 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 in denying appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

On May 21, 1993 appellant, then a 39-year-old program analyst, sustained contusions of the right leg and back and a lumbosacral strain in the performance of duty when she slipped and fell. Appropriate compensation benefits were paid.

By decision dated January 29, 1996, the Office terminated appellant's compensation benefits on the grounds that the evidence of record established that she no longer had any residual disability or medical condition causally related to her May 21, 1993 employment injury.

By letter dated January 29, 1997, appellant requested reconsideration of the Office's January 29, 1996 decision and submitted additional evidence.

In a report dated April 30, 1996, Dr. Evan J. Madow, a chiropractor, provided a history of appellant's condition and diagnosed a cervical sprain/strain and thoracic segmental dysfunction/subluxation. He stated that appellant was able to work. In Dr. Madow's report he did not mention appellant's May 21, 1993 employment injury.

In a report dated January 9, 1997, Dr. David H. Baras, a Board-certified physiatrist, provided findings on examination and related appellant's complaint of numerous medical problems including pain on the right and left sides of the body, difficulty sleeping, mild depression, fibromyalgia and he also noted that she had recently been to see a rheumatologist. He provided a diagnoses of fibromyalgia syndrome and depression. Dr. Baras did not provide an opinion as to the cause of appellant's medical conditions nor did he mention the May 21, 1993 employment injury.

By decision dated April 18, 1997, the Office denied appellant's request for review on the grounds that the evidence she submitted in support of her request was found to be of an immaterial nature and not sufficient to warrant review of its prior decision.

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 with the Board on June 18, 1997, the only decision properly before the Board is the Office's April 18, 1997 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's January 29, 1996 decision terminating appellant's compensation benefits.<sup>2</sup>

Section 10.138(b)(1) 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.<sup>3</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>4</sup>

In this case, appellant sustained a lumbosacral strain and back and leg contusions in the performance of duty on May 21, 1993. By decision dated January 29, 1996, the Office terminated her compensation benefits on the grounds that the evidence of record established that she no longer had any residual disability of medical condition causally related to her May 21, 1993 employment injury.

In appellant's January 29, 1997 request for reconsideration, she submitted additional medical evidence.

In a report dated April 30, 1996, Dr. Madow diagnosed a cervical sprain/strain and thoracic segmental dysfunction/subluxation and stated that appellant was able to work. However, he did not provide an opinion as to the cause of these conditions and he did not mention appellant's May 21, 1993 employment injury. Therefore, this report does not constitute relevant and pertinent evidence not previously considered by the Office on the issue of whether appellant had any residual disability causally related to her 1993 employment injury.

In a report dated January 9, 1997, Dr. Baras diagnosed fibromyalgia syndrome and depression. However, he did not provide an opinion as to the cause of appellant's medical conditions nor did he mention the May 21, 1993 employment injury. Furthermore, the conditions he diagnosed are not the accepted medical conditions of the 1993 employment injury.

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

<sup>2</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

<sup>3</sup> 20 C.F.R. § 10.138(b)(1).

<sup>4</sup> 20 C.F.R. § 10.138(b)(2).

Therefore, this report does not constitute relevant and pertinent evidence not previously considered by the Office on the issue of causal relationship.

As appellant did not show that the Office erroneously applied or interpreted a point of law, did not advance a point of law or a fact not previously considered by the Office and did not submit relevant and pertinent evidence not previously considered by the Office, the Office did not abuse its discretion in denying her request for reconsideration.

The April 18, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
May 24, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member