

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIRIAM C. HUGHES and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Augusta, GA

*Docket No. 98-1984; Submitted on the Record;
Issued November 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

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 review of the merits of her claim.

Appellant filed a claim alleging that, on October 10, 1996, she injured her left shoulder while carrying equipment at work. In a March 4, 1997 decision, the Office denied the claim finding that, while the evidence established that the claimed incident occurred as alleged, the medical evidence was insufficient to demonstrate that the incident caused a medical condition. In a June 4, 1997 merit reconsideration decision, the Office found that appellant had not submitted sufficient medical evidence to show that she sustained a left shoulder injury on October 10, 1996. In a July 10, 1997 letter, appellant requested reconsideration. New evidence did not accompany the request. In a July 24, 1997 decision, the Office denied appellant's reconsideration request, without reviewing the merits of the claim, on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence.

The only decision before the Board on appeal is the July 24, 1997 Office decision which denied appellant's request for a merit review of her claim. Since more than one year has elapsed between the issuance of the June 4, 1997 merit decision and June 16, 1998, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the June 4, 1997 decision.

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 fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not

previously considered by the Office.”¹ Section 10.138(b)(2) provides that when an application for review of the merits of a claim which does not meet at least one of these three requirements the Office will deny the application for review without review of the merits of the claim.²

In her request for reconsideration, appellant stated that she would submit new evidence and discuss the evidence of record. However, appellant did not submit any new evidence to support her reconsideration request nor did her July 10, 1997 reconsideration request show that the Office erroneously applied or interpreted a point of law, or advance a point of law or fact not previously considered by the Office. Evidence or argument that does not address the relevant issue involved in the case does not constitute a basis for reopening a claim.³ As appellant’s July 10, 1997 reconsideration request does not meet any of the three criteria of 20 C.F.R. § 10.138(b)(1), the Board finds that the Office properly denied appellant’s reconsideration request without reviewing the merits of her claim.

The July 24, 1997 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
November 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

³ See *Ernest J. LeBreux*, 42 ECAB 736 (1991).