

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN R. WINTER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Los Angeles, CA

*Docket No. 98-24; Submitted on the Record;
Issued October 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On June 23, 1995 appellant, then a 47-year-old revenue agent, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to factors of his federal employment.

By decision dated March 25, 1996, the Office denied appellant's compensation claim on the grounds that the weight of the medical evidence of record failed to establish that his claimed emotional condition was causally related to factors of his employment.

By letter dated March 23, 1997, appellant, through his representative, requested reconsideration of the denial of his claim. He submitted no new medical evidence. Appellant merely discussed his reasons for disagreeing with the medical evidence upon which the Office had based its March 25, 1996 decision.

By decision dated June 23, 1997, the Office denied appellant's request for reconsideration on the grounds that the issue involved in the case was a medical issue and no new medical evidence had been submitted to outweigh or create a conflict with the current weight of medical opinion evidence.

The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed her notice of appeal on September 17, 1997, the only decision before the Board is that dated June 23, 1997. Thus, the March 25, 1996 decision denying appellant's claim for an emotional condition is not before the Board.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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.¹ 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.²

In this case, the Office, by decision dated March 25, 1996, denied appellant's request for reconsideration on the grounds that the weight of the medical evidence established that his claimed emotional condition was not causally related to factors of his employment.

By letter dated March 23, 1997, appellant requested reconsideration. However, he submitted no new medical evidence. Rather, he stated his reasons for disagreeing with the medical evidence of record. However, lay persons are not competent to render a medical opinion.³ Therefore this evidence does not constitute pertinent and relevant evidence not previously considered by the Office.

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

The June 23, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

³ See *James A. Long*, 40 ECAB 538, 542 (1989).

Alternate Member