

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS RICE and DEPARTMENT OF HEALTH EDUCATION & WELFARE,
HEALTH & HUMAN SERVICES, Philadelphia, PA

*Docket No. 97-1421; Submitted on the Record;
Issued September 22, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant filed a claim on August 5, 1985 alleging that she developed carpal tunnel syndrome due to factors of her federal employment. The Office accepted appellant's claim for right carpal tunnel syndrome on January 24, 1986 and left carpal tunnel syndrome on February 27, 1989. The Office also authorized two surgeries. The Office entered appellant on the periodic rolls on June 30, 1989. The Office terminated appellant's compensation benefits on May 22, 1995. Appellant requested an oral hearing and by decision dated January 29, 1996, the hearing representative affirmed the Office's May 22, 1995 decision. Appellant requested reconsideration on December 11, 1996. By decision dated February 3, 1997, the Office denied appellant's request for reconsideration.

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 Inasmuch as appellant filed her appeal with the Board on March 5, 1997 the only decision properly before the Board is the Office's February 3, 1997 decision, denying appellant's request for reconsideration. The Board lacks jurisdiction to review the merits of appellant's claim, as the last merit decision, the January 29, 1996 decision, was issued more than one year prior to appellant's appeal to the Board on March 5, 1997.

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

¹ 20 C.F.R. § 501.3(d)(2).

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 review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³

In support of her request for reconsideration, appellant alleged an injustice had been done as she no longer had a job or benefits and as she attempted to return to work and her condition reappeared. Appellant also alleged that the referral physicians did not adequately examine her. She stated physicians such as the Office referral physicians, worked for insurance companies and rarely gave an employee a favorable decision. She further stated that she continued to experience pain in her hands.

Appellant did not submit additional new evidence in support of her request for reconsideration. Furthermore, although she protested the consequences of the Office's decision and alleged that she was not adequately examined, she did not advance a point of law or fact not considered by the Office. Appellant had previously alleged that the duration of examination by the Office physicians was insufficient. Appellant did not allege that the Office erroneously applied or interpreted a point of law.

As appellant failed to comply with one of the requirements of the section 10.138(b), the Office properly declined to reopen her claim for consideration of the merits.

The decision of the Office of Workers' Compensation Programs dated February 3, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).