

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNICE M. CURRY and U.S. POSTAL SERVICE,
POST OFFICE, Sicklerville, NJ

*Docket No. 97-2839; Submitted on the Record;
Issued September 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that her claimed condition of carpal tunnel syndrome is causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying merit review of appellant's claim on June 11, 1997.

The Board has given careful consideration to the issues involved and the entire case record. The Board finds that the decision of the hearing representative of the Office dated January 23 and finalized on January 24, 1997, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The Board also finds that the Office properly exercised its discretion in refusing to reopen appellant's claim for a merit review on June 11, 1997. Appellant, through her representative, filed a timely request for reconsideration on April 16, 1997. In support of the request for reconsideration, appellant submitted a February 9, 1996 statement describing her job duties and a December 9, 1996 report, from Dr. Scott M. Fried, an osteopath. Appellant's counsel argued that it was not clear from the prior decision whether the hearing representative had considered Dr. Fried's report.

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.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 the three requirements enumerated

¹ 20 C.F.R. § 10.138(b)(1).

under section 10.138(b)(1), the Office will deny the application for review without reaching the merits of the claim.²

In its June 11, 1997 decision, the Office noted that while the date of Dr. Fried's December 9, 1996 report had been incorrectly noted as November 9, 1996, the substance of his report was properly set forth in the prior decision.³ Additionally, appellant's February 9, 1996, statement was already a part of the record and previously considered by the hearing representative. The Office, therefore, properly concluded that the evidence submitted on reconsideration was duplicative. Inasmuch as appellant did not submit any relevant and pertinent evidence not previously considered by the Office, did not argue that the Office erroneously applied or interpreted a point of law and did not otherwise advance a point of law or a fact not previously considered, the Office properly denied merit review of appellant's claim on June 11, 1997.

The decisions of the Office of Workers' Compensation Programs dated June 11 and January 24, 1997 are hereby affirmed.

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

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² 20 C.F.R. § 10.138(b)(2).

³ The confusion over the date of Dr. Fried's December 9, 1996 report, appears to stem from counsel's December 23, 1996 cover letter, in which he incorrectly identified the date of the doctor's report as "November 9, 1996."