

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. JACOBS and U.S. POSTAL SERVICE,
POST OFFICE, Capital Heights, MD

*Docket No. 99-363; Submitted on the Record;
Issued April 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

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 on July 8, 1998.

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 on July 8, 1998.

Appellant, a data collection technician, filed a claim on November 17, 1995 alleging that she was injured in the performance of duty on that date when a motor vehicle struck her. The Office accepted appellant's claim for fracture of the right distal radius on March 7, 1996. By decision dated March 11, 1997, the Office found that appellant had no loss of wage-earning capacity. Appellant requested a schedule award on April 2, 1997. By decision dated June 24, 1997, the Office granted appellant a schedule award for 10 percent permanent impairment of the right upper extremity. Appellant requested reconsideration of this decision on June 23, 1998. By decision dated July 8, 1998, the Office found that appellant failed to submit relevant new evidence in support of her 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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.²

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

In support of her request for reconsideration, appellant resubmitted a note dated May 12, 1997 from her attending physician, Dr. Stephen D. Webber, a Board-certified orthopedic surgeon. As this note had already been considered by the Office in reaching its June 24, 1997 decision it does not constitute relevant new evidence. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.³ As appellant failed to submit relevant new evidence, the Office was not required to reopen her claim for consideration of the merits.

The July 8, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 26, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

³ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).