

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN B. CONANT and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Martinsburg, WV

*Docket No. 99-1484; Submitted on the Record;
Issued December 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

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

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in denying appellant's request for merit review.

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 As appellant filed her appeal with the Board on March 12, 1999, the only decision properly before the Board is the Office's December 18, 1998 decision denying appellant's request for merit review. The Board has no jurisdiction to consider the Office's decisions dated: September 16, 1997; October 11 and 10, July 26 and June 13, 1996; August 17, April 28 and 6, 1995; and September 12, 1994.²

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.³ 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.⁴

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

On April 18, 1994 appellant, then a 45-year-old computer specialist, filed a claim for compensation benefits alleging that she sustained an injury caused by exposure to chemicals at work with a date of injury of February 25, 1993. This claim was developed under Office file number A3-196374. On August 20, 1994 she filed a second claim for chemical exposure in the workplace with a date of injury of August 19, 1994 developed under Office file number A3-200269. On May 12, 1995 appellant filed a third claim for chemical exposure at work with a date of injury of May 10, 1995. This claim was developed under Office file number A25-468016. These three cases were consolidated by the Office in June 1997 under Office file number A3-196374.

By decisions dated September 16, 1997,⁵ October 10 and June 13, 1996, April 6, 1995 and September 12, 1994, the Office denied appellant's claim for an injury due to chemical exposure on February 25, 1993 under Office file number A3-196374. By decisions dated July 26, 1996 and April 28, 1995, the Office denied appellant's claim under file number A3-200269. By decisions dated October 11, 1996 and August 17, 1995, the Office denied appellant's claim under file number A25-468016.

By letter dated September 14, 1998, appellant requested reconsideration and submitted arguments which she felt warranted further consideration of the merits of her claim. By decision dated December 18, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of her request was not sufficient to warrant a further merit review of her case.

In her September 14, 1998 request for reconsideration, appellant argued that it was improper for the same claims examiner who issued the April 28, 1995 Office decision to issue the September 16, 1997 decision because the appeal rights notice provided with her copy of the April 28, 1995 decision stated that any request for reconsideration would be considered by an Office staff member other than the one who issued that decision. However, appellant did not request reconsideration of the April 28, 1995 decision. She instead chose from among her appeal rights the right to request an oral hearing before an Office hearing representative and a decision regarding her appeal of the April 28, 1995 decision was rendered by an Office hearing representative on July 26, 1996. Thus, her appeal of the April 28, 1995 decision was not considered by the same Office staff person who rendered that decision. Therefore, this argument does not establish that the Office erroneously applied or interpreted a point of law and is not sufficient to warrant further merit review of appellant's claim.

Appellant also argued that the Office considered in its September 16, 1997 decision only whether appellant had sustained an injury due to occupational exposure to carbon monoxide. However, the record shows that the Office indicated in its September 16, 1997 decision that all of the evidence from appellant's consolidated claims for exposures to various chemicals had been considered. Therefore, this argument does not show that the Office erroneously applied or interpreted a point of law.

⁵ This decision was rendered subsequent to consolidation of appellant's three claims for occupational exposure to chemicals.

As appellant failed to show that the Office erroneously applied or interpreted a point of law, did not advance a point of law or a fact not previously considered by the Office and did not submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated December 18, 1998 is affirmed.

Dated, Washington, DC
December 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member