

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA F. ANDERSON and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, JOHN F. KENNEDY AIRPORT, NY

*Docket No. 98-1121; Submitted on the Record;
Issued March 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

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

This is the third appeal in this case. By decision dated September 18, 1997, the Board set aside the Office's June 5, 1996 decision, in which the Office denied appellant's request for reconsideration on the grounds that the request was untimely and failed to show clear evidence of error. The Board remanded the case for consideration of appellant's timely request for reconsideration.¹ By order dated June 11, 1993, the Board dismissed appellant's appeal on the grounds that there was no final adverse decision issued within one year of her February 16, 1993 appeal to the Board.²

The Board has duly reviewed the case record and concludes that the Office did not abuse its discretion, in its November 17, 1997 decision, in denying appellant's request for reconsideration.

By decision dated March 16, 1994, the Office denied appellant's claim for a schedule award for a permanent impairment as a result of a December 20, 1989 employment-related contusion and crush injury of the right forearm. By decision dated June 14, 1994, the Office denied modification of its March 16, 1994 decision.

By letter dated June 2, 1995 and received by the Office on June 5, 1995, appellant requested reconsideration of the denial of her claim for a schedule award and submitted

¹ Docket No. 96-2121.

² Docket No. 93-1009.

additional evidence. By decision dated November 17, 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.³ As appellant filed her appeal with the Board on February 19, 1998 the only decision properly before the Board is the Office's November 17, 1997 decision, denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's June 14 or March 16, 1994 decisions, denying appellant's claim for a schedule award.⁴

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her 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.⁵ 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.⁶

In support of her June 2, 1995 request for reconsideration, appellant submitted a report dated May 17, 1995 from Dr. Donald Forman. The record shows that this report contains information which was previously submitted by Dr. Forman in reports dated January 21 and April 16, 1994 and which was previously considered by the Office. Therefore, this report does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted a report dated December 13, 1995 from Edward Modzelewski, a physical therapist. However, Mr. Modzelewski is not a physician under the Federal Employees' Compensation Act⁷ and, therefore, his report is of no probative value and does not constitute relevant and pertinent evidence not previously considered by the Office.

As appellant did not 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 did not abuse its discretion in denying her request for reconsideration.

³ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

⁴ *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ A physical therapist is not a "physician" as defined in the Act. A "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law and chiropractors only to the extent that their reimbursable services are limited to treatment of a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2).

The November 17, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 6, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member