

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA E. RAMSEY and DEPARTMENT OF DEFENSE,
ARMY SERGEANTS MAJOR ACADEMY, Fort Bliss, TX

*Docket No. 98-1919; Submitted on the Record;
Issued March 17, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record and concludes that the Office did not abuse its discretion in denying 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 As appellant filed her appeal with the Board on June 1, 1998, the only decision properly before the Board is the Office's March 4, 1998 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's February 25, 1997 merit decision denying her claim.²

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or a fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. 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.³

On November 21, 1995 appellant, then a 54-year-old librarian, filed an occupational disease claim alleging that she sustained an emotional condition which she attributed to factors

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)(2).

of her federal employment. By decision dated February 25, 1997, the Office denied appellant's claim on the grounds that the factors which appellant alleged as having contributed to her claimed emotional condition were either factors which are not compensable under the Federal Employees' Compensation Act⁴ or factors which the evidence of record did not establish as factual.

By letter dated February 23, 1998, appellant requested reconsideration of the denial of her claim and submitted additional evidence. By decision dated March 4, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence she submitted was immaterial and not sufficient to warrant further merit review.⁵

In support of her February 23, 1998 request for reconsideration, appellant submitted a copy of an August 18, 1995 Merit Systems Protection Board Settlement Agreement between appellant and the employing establishment. This agreement does not contain any admission of error or abuse by the employing establishment concerning its treatment of appellant nor does it address any specific employment factors alleged by appellant to have caused her claimed emotional condition. Therefore, this agreement does not constitute relevant and pertinent evidence not previously considered by the Office.

With her request for reconsideration, appellant also submitted medical evidence. However, unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence.⁶ Therefore, this medical evidence 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.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ The Board notes that appellant submitted new evidence with her appeal to the Board. This evidence was not before the Office at the time it issued its March 4, 1998 decision, and the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

⁶ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated March 4, 1998 is affirmed.

Dated, Washington, D.C.
March 17, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member