

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA C. JORAY and U.S. POSTAL SERVICE,
POST OFFICE, Edmund, OK

*Docket No. 98-105; Submitted on the Record;
Issued May 8, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
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 2, 1997.

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 2, 1997.

Appellant, a distribution clerk, filed a claim on October 23, 1990 alleging that she had sustained aggravation of her degenerative disc disease and a herniated disc at L4-5, cervical strain and left trapezius strain due to factors of her federal employment. The Office denied her claim by decision dated June 4, 1991 finding that she failed to submit sufficient medical evidence to meet her burden of proof. Appellant requested an oral hearing. By decision dated April 1, 1993, the hearing representative affirmed the Office's June 4, 1991 decision. She requested reconsideration on March 31, 1994, May 16, 1995, May 18, 1996 and by decisions dated May 17, 1994, May 19, 1995 and May 22, 1996, respectively, the Office denied modification of its June 4, 1991 decision. Appellant requested reconsideration on May 20, 1997 and by decision dated July 2, 1997, the Office declined to reopen appellant's claim for consideration of the merits finding that she failed to submit relevant new evidence.

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 review the merits of the claim.²

¹ 20 C.F.R. § 10.138(b)(1).

² 20 C.F.R. § 10.138(b)(2).

The Office denied appellant's claim on the grounds that she failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between her diagnosed conditions and her accepted employment duties. In support of her request for reconsideration, appellant, through her attorney, submitted four documents which appear to be the forms completed by appellant prior to examination by a physician. The documents are dated January 5, 1989 and are not signed by a physician. As these documents are not signed by a physician, the documents do not constitute medical evidence and have no probative value in establishing appellant's claim.³ Therefore, these documents are not relevant to the medical reasoning resulting in the denial of appellant's claim and are insufficient to require the Office to reopen appellant's claim for review of the merits.

Appellant's attorney also reviewed the medical evidence of record and argued that the Office had improperly determined that this evidence contained insufficient medical reasoning to meet appellant's burden of proof. The Board finds that this argument does not constitute a point of law or a fact not previously considered by the Office. Appellant had previously submitted the evidence in the belief that it was sufficient to further or establish her claim. The argument that it was sufficient to do so has already been implicitly considered and rejected by the Office. Therefore, this argument is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

The July 2, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 8, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Merton J. Sills*, 39 ECAB 572 (1988).