

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA H. HUGGINS and U.S. POSTAL SERVICE,
POST OFFICE, Hollywood, FL

*Docket No. 99-773; Submitted on the Record;
Issued November 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

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

On September 7, 1993 appellant, then a 37-year-old letter carrier, sustained a sprain of the left ankle in the performance of duty. She returned to work on September 17, 1993. On October 28, 1994 appellant filed a claim for a recurrence of disability commencing on May 31, 1994 which she attributed to her September 7, 1993 employment injury.

By decisions dated August 3, 1995, July 23, 1996 and June 6, 1997, the Office denied appellant's claim for a recurrence of disability. By letter dated June 1, 1998, she requested reconsideration and submitted additional evidence. By decision dated August 21, 1998, the Office denied appellant's request for further merit review of her claim.

The Board's jurisdiction to consider and decide appeals from final Office decisions 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 November 20, 1998, the only decision properly before the Board is the Office's August 21, 1998 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's June 6, 1997, July 23, 1996 or August 3, 1995 decisions denying appellant's claim for a recurrence of disability.²

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

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

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

In a report dated July 14, 1997 and notes dated July 23, 1997, Dr. Thomas A. Hoffeld, appellant's attending orthopedic surgeon, provided a history of appellant's condition and findings on examination and stated that she would have a cast put on her foot to treat her left ankle problems. In notes dated July 23, 1997, he related that appellant was to wear a cast on her left ankle for one month and then be reevaluated.

In notes dated September 3, 1997, Dr. Hoffeld related that appellant had her cast removed and was pleased with the results but needed a better arch liner for her shoes. He related that appellant wanted to wait one week before returning to work and he noted that appellant might require surgery for her tendon problem.

In notes dated September 29, 1997, Dr. Hoffeld related that appellant was doing fairly well with an occasional twinge associated with activity levels and that when she was much more active on her feet she needed to rest the next day. He noted that appellant was not wearing the type of footwear that he had recommended. Dr. Hoffeld reviewed with her the appropriate arch support and supportive shoe she needed to avoid posterior tendon problems.

In his reports and notes, Dr. Hoffeld did not address the critical issue in this case whether appellant sustained a recurrence of disability on May 31, 1994 causally related to her September 7, 1993 employment injury. Therefore, this 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.

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

The decision of the Office of Workers' Compensation Programs dated August 21, 1998 is hereby affirmed.

Dated, Washington, DC
November 16, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member