

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VITA MOONEY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Holtsville, N.Y.

*Docket No. 96-1816; Submitted on the Record;
Issued May 10, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's January 25, 1996 request for reconsideration.

On July 15, 1989 appellant, a tax examiner, sustained an injury while in the performance of duty when a chair broke and she fell to the floor. The Office accepted her claim for the conditions of fractured right thumb, contusion to the thumb and buttocks and back and for herniated nucleus pulposus at the L3-4 level, for which she underwent surgery. Appellant sustained recurrences of disability on December 19, 1989 and July 6, 1990 causally related to her employment injury.

On September 19, 1994 appellant filed a claim asserting that she sustained a recurrence of disability on August 30, 1994 causally related to the injury of July 15, 1989. Describing the circumstances of the recurrence as reported by appellant, appellant's supervisor stated: "Employee states there has been a gradual worsening of her lower back problems with pain radiating to lower extremities." Appellant also filed a claim asserting that she sustained a second recurrence of disability on September 13, 1994. Appellant's supervisor offered the same description of this recurrence.

In a decision dated February 9, 1995, the Office denied the two claims of recurrence on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability. The Office noted that it had requested a statement describing the circumstances of the claimed recurrences but that appellant did not reply. The Office also noted that medical reports from appellant's orthopedist, Dr. Arnold Schwartz, did not establish a causal relationship between her claimed recurrences and the accepted medical conditions from the July 15, 1989 injury.¹

¹ Because appellant filed her appeal more than one year after the Office's February 9, 1995 decision, the Board has no jurisdiction to review that decision. 20 C.F.R. §§ 501.3(d), 501.10(d)(2).

On January 25, 1996 appellant requested reconsideration. In support thereof she submitted medical reports predating the dates of the claimed recurrences of disability. These reports tended to support that the following conditions were causally related to the employment injury of July 15, 1989: status post right hand trauma and hyperextension injury of the wrist, with clinical evidence of median nerve dysfunction at the wrist level; right hand pain, associated with clinical evidence of carpal tunnel syndrome and myofascitis; and post-traumatic stress disorder.

Appellant argued that her employment injuries (the accepted injury of July 15, 1989, the accepted recurrences, an employment injury of May 15, 1991 and three recurrences not accepted by the Office) contributed to a deterioration of her mental faculties. She explained that the stress of the physical injuries, the stress of filing numerous workers' compensation claims and the loss of capabilities resulting from work-related injuries had resulted in a psychiatric condition that included depression and anxiety.

In a decision dated February 27, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence or argument submitted in support thereof was insufficient to warrant a merit review.

The Board finds that the Office properly denied appellant's January 25, 1996 request for reconsideration.

Section 10.138(b)(1) of Title 20 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.² 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.³ Evidence that does not address the particular issue involved constitutes no basis for reopening a case.⁴

In her January 25, 1996 request for reconsideration, appellant did not attempt to show that the Office erroneously applied or interpreted a point of law. She is, therefore, not entitled to a merit review of her claim under the first criterion above.

Appellant argued that she sustained a psychological condition (in addition to degenerative disease of the lumbar spine and spinal stenosis) at least in part as a result of the accepted employment injury and accepted recurrences, but she submitted no probative medical opinion evidence to establish this as a fact. Moreover, she submitted no medical opinion evidence explaining how her disability for work on August 30 and September 13, 1994 was a

² 20 C.F.R. § 10.138(b)(1).

³ *Id.* at § 10.138(b)(2).

⁴ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

result of such conditions. For this reason, the Board finds that appellant is not entitled to a merit review of her claim under the second criterion above.

Appellant submitted medical evidence tending to support that certain conditions, both physical and mental were causally related to the employment injury of July 15, 1989, but this is not pertinent or relevant to the issue raised by the claims appellant filed on September 19, 1994. Predating the dates of the claimed recurrences, these medical reports fail to address whether appellant's disability for work beginning August 30 and September 13, 1994 was causally related to the employment injury of July 15, 1989. The Board, therefore, finds that appellant may not obtain a merit review of her claim on the basis of the third criterion above.

Because appellant's January 25, 1996 request, for reconsideration did not meet one of the three criteria for obtaining a merit review of her claim, the Board finds that the Office properly denied her request.

The February 27, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 10, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member