

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAXINE ALDAZ and DEPARTMENT OF THE ARMY,
Fort Carson, CO

*Docket No. 98-368; Submitted on the Record;
Issued September 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
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 in the present appeal and finds that the refusal of the Office, in its December 13, 1996 decision, to reopen appellant's case for further consideration of the merits of her claim did not constitute an abuse of discretion.

The only decision before the Board in this appeal is the Office's December 13, 1996 decision denying appellant's request for reconsideration. Because more than one year has elapsed between the issuance of the Office's last merit decision on November 6, 1996¹ and November 12, 1997, the date that appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 6, 1996 decision.²

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.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

¹ By this decision, the Office denied appellant's request for a schedule award for the back.

² See 20 C.F.R. § 501.3(d)(2).

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

Following the Office's November 6, 1996 denial of her claim for a schedule award, appellant, by letter dated November 18, 1996, requested reconsideration. She submitted no new evidence, only her letter requesting reconsideration.

As appellant did not submit any pertinent and relevant evidence not previously considered by the Office, she did not advance a point of law or a fact not previously considered by the Office and did not show that the Office erroneously applied or interpreted a point of law, the Office did not abuse its discretion in denying her request for reconsideration.

The December 13, 1996 decision of the Office of Workers' Compensation Programs is affirmed.⁵

Dated, Washington, D.C.
September 23, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁵ The Board notes that this case record contains a document belonging to another claimant. Upon return of the case record to the Office, this document should be placed in the correct file.