

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA TURNER and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Butte, MT

*Docket No. 98-1869; Submitted on the Record;
Issued February 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant reopening the claim for merit review.

In the present case, the Office accepted that appellant sustained a cervical sprain and chronic lumbosacral strain in the performance of duty on September 30, 1980. On September 26, 1995 appellant filed a claim for a recurrence of disability. By decision dated October 6, 1995, the Office denied the claim on the grounds that the medical evidence failed to establish causal relationship between the claimed disability and the employment injury. In a decision dated October 28, 1996, an Office hearing representative affirmed the denial of the recurrence of disability claim.

In a letter dated October 13, 1997, appellant requested reconsideration of her claim. By decision dated February 25, 1998, the Office determined that appellant's request was insufficient to warrant reopening the claim for merit review.¹

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.² Since appellant filed her appeal on May 28, 1998, the only decision over which the Board has jurisdiction on this appeal is the February 25, 1998 decision denying her request for reconsideration.

¹ A nonmerit review on a request for reconsideration is a limited review to determine if the evidence is sufficient under 20 C.F.R. § 10.138(b)(1) to reopen the case for merit review, and the only right of appeal is to the Board. A merit review is a determination, pursuant to the discretionary authority granted by 5 U.S.C. § 8128(a), of whether the evidence is sufficient to modify the prior decision, and appeal rights include a one year period to request reconsideration or appeal to the Board; *see* 20 C.F.R. § 10.138; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7-8. (June 1997).

² 20 C.F.R. § 501.3(d).

The Board has reviewed the record and finds that the Office properly denied merit review in this case.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's 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 fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁵

With her request for reconsideration, appellant submitted additional medical evidence. Of these reports, the only evidence that had not previously been considered by the Office are treatment notes from November 1982 by an unidentified physician, and a brief report dated May 3, 1985 from Dr. John H. Mahon, an orthopedic surgeon. This evidence does not provide new and relevant information regarding the medical issue presented in this case. The November 1982 notes indicate that appellant was having back pain and received treatment. Dr. Mahon stated that appellant's lower back was becoming stiffer and more painful, without providing pertinent information on the issue of whether appellant sustained a recurrence of disability causally related to her employment injuries. Appellant did not provide any new and relevant medical evidence with respect to her claim for a recurrence of disability.⁶

Accordingly, the Board finds that appellant has not submitted new and relevant medical evidence. She has not met any of the requirements of section 10.138(b)(1) and therefore the Office properly refused to reopen the claim for merit review.

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ The Board notes that appellant submitted an article from an American Medical Association publication; excerpts from medical publications on general medical principles are of little probative value since they do not address the specific factual and medical circumstances in this case; *see Ruby I. Fish*, 46 ECAB 276 (1994).

The decision of the Office of Workers' Compensation Programs dated February 25, 1998 is affirmed.

Dated, Washington, D.C.
February 10, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member