

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YOLANDA REIFF and DEPARTMENT OF THE NAVY,  
NORTH ISLAND NAVAL AIR STATION, San Diego, CA

*Docket No. 98-2373; Submitted on the Record;  
Issued February 1, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's April 5, 1998 request for reconsideration.

In a decision dated April 7, 1997, the Office found that the medical evidence established that appellant had no permanent impairment of her upper extremities as a result of her employment-related bilateral carpal tunnel syndrome.<sup>1</sup>

On April 1, 1998 appellant requested a second opinion. She felt that her last medical examination, on April 15, 1996, was incomplete and not the examination requested by the Office. Her visit, she stated, lasted approximately five minutes.

In a letter dated April 5, 1998, appellant requested reconsideration. She described her appointment with the Office referral physician and explained that he performed none of the guideline tests that were requested by the Office's referral letter. She submitted a copy of the Office's referral letter, a copy of an April 15, 1996 medical record showing a time of 3:30 p.m. and a "chart up" time of 3:34 p.m.,<sup>2</sup> an interoffice memorandum concerning time frames for processing injury claims, an unsigned work restriction form indicating that appellant was discharged with no permanent disability but also indicating that her disability was permanent and stationary, a memorandum from the employing establishment's injury placement specialist enclosing updated medical information, a duty status report dated April 15 and 16, 1996 from appellant explaining that "no restrictions" meant "no new restrictions," a copy of appellant's

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<sup>1</sup> Because appellant filed her July 24, 1998 appeal more than one year after the Office's April 7, 1997 decision, the Board has no jurisdiction to review the Office's decision denying a schedule award. 20 C.F.R. § 501.3(d) (time for filing); *see* 20 C.F.R. § 501.10(d)(2) (computation of time).

<sup>2</sup> "In" and "Out" times were left blank.

April 1, 1998 letter, an attendance sheet and several physical therapy notes from September and October 1994.

In a decision dated April 21, 1998, the Office found that appellant's request for reconsideration neither raised substantive legal questions nor included new and relevant evidence and that her request was *prima facie* insufficient to warrant a merit review of her claim. The Office found that appellant's request for reexamination by a new doctor was not evidence but only the attempt to secure new evidence, which of itself and unaccompanied by new evidence, was insufficient to warrant a merit review of the claim.

The Board finds that the Office properly denied appellant's 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.<sup>3</sup>

Appellant has not shown that the Office erroneously applied or interpreted a point of law, therefore, she may not obtain a merit review of her claim under the first criterion above. She has, instead, attempted to advance a point of law or a fact not previously considered by the Office, namely, that the Office referral physician did not perform the tests requested. The Board notes, however, that the Office referral physician fully completed the evaluation form provided by the Office. He reported specific clinical findings on range of motion, grade of pain and degree of grip strength. The evidence that appellant submitted to support her request for reconsideration does not tend to prove otherwise. Such evidence is either irrelevant or immaterial to appellant's argument. Without evidence tending to support the validity of her complaint, the Board finds that appellant may not obtain a merit review of her claim under the second or third criteria above.<sup>4</sup>

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 three criteria noted above, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

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<sup>3</sup> 20 C.F.R. § 10.138(b)(1).

<sup>4</sup> Reopening of a claim for merit review is not required where the contention does not have a reasonable color of validity. See *Constance G. Mills*, 40 ECAB 317 (1988). See generally *Daniel O'Toole*, 1 ECAB 107 (1948).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

The April 21, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
February 1, 2000

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member