

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. KELLER, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 98-2505; Submitted on the Record;
Issued February 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review of the merits of his claim.

Appellant filed an occupational disease claim for tennis elbow on April 4, 1997. The claim was denied by the Office on June 10, 1997, on the grounds that appellant submitted insufficient medical evidence to show that factors of his employment caused his elbow condition. In a June 8, 1998 letter, appellant's attorney requested reconsideration, alleging that the Office's decision was "contrary to fact and law."¹ New evidence did not accompany the request. In a July 28, 1998 decision, the Office denied appellant's request for reconsideration, without reviewing the merits of the claim, on the grounds that insufficient evidence was submitted.

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 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

¹ The attorney did not elaborate with regard to what aspects of the June 10, 1997 decision were felt to be contrary to fact and law.

² 20 C.F.R. § 10.138(b)(1).

claim which does not meet at least one of these three requirements the Office will deny the application for review without review of the merits of the claim.³

In his request for reconsideration, appellant did not submit any new evidence nor did his attorney specify any erroneous application of law or advance a point of law or fact not previously considered by the Office. As the issue in this case is medical in nature, the submission of new medical evidence addressing whether employment factors caused or aggravated the claimed condition was necessary to require the Office to reopen the claim for a merit review. However, such evidence was not submitted. For these reasons, the Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review of the claim.

The July 28, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 17, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

³ 20 C.F.R. § 10.138(b)(2).