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BESSIE E. SUMMERS, Appellant	)	
	)	
and	)	Docket No. 04-290
	)	Issued: March 2, 2004
DEPARTMENT OF VETERANS AFFAIRS,	)	
VETERANS ADMINISTRATION HOSPITAL,	)	
Hines, IL, Employer	)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

On November 13, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated October 14, 2003, in which the Office refused to reopen appellant's claim for further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has nonmerit jurisdiction over this case.

The issue is whether the Office properly refused to reopen appellant's claim for merit review on October 14, 2003 under 5 U.S.C. § 8128(a).

On January 21, 1975, appellant, then a 38-year-old policewoman, submitted a claim for compensation, Form CA-1, alleging that on that date she injured her back, right leg and wrist when she fell down some icy steps in the performance of duty. Appellant stopped work on January 21, 1975 and returned to full, unrestricted duty on May 12, 1975. The Office accepted appellant's claim for right ankle, knee and wrist sprains.

On February 20, 1998 appellant filed a Form CA-2a claim for a recurrence of disability, beginning December 1, 1996. By letter dated April 27, 1998, the Office informed appellant of the type of factual and medical evidence necessary to support her claim. In a decision dated December 13, 2001, the Office denied appellant's claim for a recurrence of disability on the grounds that she failed to submit any supporting medical evidence. Following an oral hearing held at appellant's request, in a decision dated October 7, 2002, an Office hearing representative affirmed the Office's prior decision.

By letter received September 26, 2003, appellant requested reconsideration of the Office's prior decision. Appellant asserted that she had not been able to obtain the necessary medical records to support her claim, as they were presumed lost or destroyed. In support of her request, appellant submitted a statement from Rosie Thompson, her sister, who asserted that appellant continued to suffer from the effects of her employment injuries. In a decision dated October 14, 2003, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that appellant's request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

The only decision before the Board in this appeal is the Office's decision dated October 14, 2003 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision dated October 7, 2002 and the filing of appellant's appeal, postmarked November 7, 2003 and received by the Board on November 13, 2003, the Board lacks jurisdiction to review the merits of appellant's claim.¹ Section 10.606 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 relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608 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.

ANALYSIS

In her letter requesting reconsideration, appellant stated only that she was unable to obtain her medical records and was trying to secure a legal argument, and did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

¹ 20 C.F.R. §§ 501.3(d)(2), 501.3(d)(3)(ii).

² 20 C.F.R. § 10.606(b).

With respect to the third above-noted requirement, the Board notes that, together with her request for reconsideration of the Office's decision denying her claim for a recurrence of disability, appellant submitted only a statement from her sister, Ms. Thompson. The Board has held, however, that the question of whether a claimed period of disability is causally related to the employment injury is a medical one and must be resolved by medical evidence.³ As there is no evidence in the record that appellant's sister is a physician within the meaning of the Federal Employees' Compensation Act,⁴ her statement cannot be considered pertinent and relevant evidence.⁵

In addition to the statement submitted with her request for reconsideration, the record contains several items of evidence which were submitted to the Office subsequent to the October 7, 2002 merit decision. These items include several prescriptions and a treatment note dated May 14, 1994, and an attending physician's report, Form CA-20, dated June 10, 2002, from Dr. Virendra S. Bisla, appellant's treating Board-certified internist. However, none of these reports contain any information pertaining to the relevant issue in this case.⁶ Evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.⁷ Finally, appellant submitted a letter dated May 14, 2002 from Peggy Gilligan, office manager for Punislav M. Lekovic, M.D., stating that she was unable to locate any records to show that appellant was a former patient of the physician. Again, as Ms. Gilligan is not a physician and as her letter does not address the relevant issue in this claim, her statement cannot be considered pertinent and relevant evidence.⁸ As appellant failed to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office properly refused to reopen appellant's claim for review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(2).

CONCLUSION

The Board finds that, as appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office properly refused to reopen appellant's claim for review of the merits on October 14, 2003.

³ *Roger Williams*, 52 ECAB 468 (2001); *Manuel Gill*, 52 ECAB 282 (2001); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8101(2) defines "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *Sheila G. Peckenschneider*, 49 ECAB 430 (1998).

⁶ Dr. Bisla's May 14, 1994 prescriptions and treatment notes are largely illegible and predate the claimed period of disability. The June 10, 2002 attending physician's report contains a diagnosis of acute lumbosacral spasm and bilateral shoulder pain, causally related to her employment. While Dr. Bisla notes that appellant had to stop work in 1976 because there was no light duty available, and states that she continues to suffer from leg and back pain, the physician does not address whether appellant was disabled for work beginning December 1, 1996.

⁷ *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ *Id.*; *Roger Williams*, *supra* note 3; *Manuel Gill*, *supra* note 3; *Jacqueline M. Nixon-Steward*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2003 is affirmed.

Issued: March 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member