U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN C. SIMS and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

Docket No. 03-1876; Submitted on the Record;
Issued November 4, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant established that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly found that appellant abandoned her request for a hearing.

On July 2, 2002 appellant, then a 53-year-old mail processing clerk, filed an occupational claim alleging that on January 16, 2001 she became aware she had a disease or illness. In a statement dated August 8, 2002, appellant stated that she originally hurt her back at the employing establishment on August 6, 1990 and stated that on January 16, 2001 the pain came back and did not go away but got worse.[1] She stated that her lumbar chair was broken and loose and did not support her back, that she felt pain with prolonged sitting and that she obtained relief when she stood and walked a little bit. Appellant stated that she asked a coworker for help if the mail was heavy and that she could only carry 20 pounds.

In a statement dated June 19, 2001, appellant stated that on January 16, 2001 she began experiencing pain in her back while working the modified cases using a lumbar chair.[2] She stated that she twisted and turned while throwing mail in the case and picked up trays weighing up to 20 pounds on her ledge. Appellant stated that the air was so cold it made the arthritis in her back flare up. She stated that her broken lumbar chair caused her to reach higher to case the mail causing her shoulder to feel like it was popping and when appellant reached she felt pain in her shoulder, her arm, down her shoulder to her back and sometimes as far down as her leg. In a statement dated August 8, 2002, appellant provided a similar assessment of the factors, which she believed contributed to her claimed condition.

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[1] Appellant sustained a work-related lumbar strain on August 6, 1990.

[2] It appears that appellant initially submitted this statement in connection with a recurrence of disability claim related to her August 6, 1990 injury.

Appellant submitted a duty status report from a physician with an illegible signature dated August 1, 2002, which stated that she had clinical findings of osteoarthritis in her lower back, that the pain had worsened and that she required standing, lifting and sitting restrictions. The report listed the date of injury as January 16, 2001, but did not indicate that any injury was sustained due to employment factors.

By letter dated July 24, 2002, the Office requested additional information from appellant including a comprehensive medical report from her treating physician addressing how incidents at her employment contributed to her condition.

By decision dated September 13, 2002, the Office denied appellant's claim, stating that that the evidence was not sufficient to establish that she sustained an injury due to the claimed employment factor.[3]

By letter dated October 2, 2002, appellant requested an oral hearing before an Office hearing representative, which was scheduled for April 29, 2003 at 10:45 a.m. in Denver, Colorado. Appellant did not appear.

By decision dated May 5, 2003, the Office hearing representative noted that appellant had received written notification of the hearing 30 days in advance but failed to appear. The Office hearing representative stated that there was no indication in the record that she contacted the Office either prior or subsequent to the scheduled hearing to explain her failure to appear. The Office hearing representative stated that, under the circumstance, it was deemed that appellant had abandoned her request for a hearing.

The Board finds that appellant did not establish that she sustained an occupational disease or injury causally related to factors of her federal employment.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition, for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical

[3] The record contains a decision dated May 28, 2002 denying appellant's request for modification of an Office's decision dated October 25, 2001. It would appear that these decisions pertain to a claim related to appellant's August 6, 1990 injury. In any event, the Board does not have jurisdiction over this decision because appellant did not file an appeal within a year; *see Marilyn F. Wilson*, 51 ECAB 234, 236 n.1 (1999).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[4]

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[5]

In the instant case, appellant submitted two statements dated June 19, 2001 and August 8, 2002, in which she related pain in her back, shoulder, arm and leg to defects in her lumbar chair at work, which caused her back pain. Appellant stated that sitting in the chair and the fact that the defective chair made her reach higher also caused her pain. She also stated that the cold air caused the arthritis in her back to flare up. In an August 1, 2002 duty status report, a physician with an illegible signature stated that appellant had osteoarthritis in her back, which worsened and that she required restrictions. The report, however, did not indicate that appellant's osteoarthritis resulted from any factors of her federal employment.[6] The Board has held that rationalized medical evidence attributing appellant's medical condition to factors of employment is necessary to establish an occupational claim.[7] Despite the Office's advising appellant of the evidence she needed to submit, appellant did not submit the requisite evidence. She, therefore, has failed to establish her claim.

The Board finds that the Office properly determined that appellant abandoned her request for a hearing.

Section 10.137 of Title 20 of the Code of Federal Regulations revised as of April 1, 1997, previously set forth the criteria for abandonment:

> "A schedule hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant.
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> "A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled.

[4] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[6] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[7] *See Bonnie Goodman*, 50 ECAB 139, 143 (1998).

> "Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing."[8]

These regulations, however, were once again revised as of April 1, 1999. Effective January 4, 1999, the regulations now make no provision for abandonment. Section 10.622(b) addresses requests for postponement and provides for a review of the written record when the request to postpone does not meet certain conditions. Alternatively, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative. The section is silent on the issue of abandonment.

The legal authority governing abandonment of hearing now rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual dated January 1999 provides as follows:

> "e. Abandonment of Hearing Requests.
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> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.
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> "Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [District Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.
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> "(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.
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> "This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."[9]

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on April 29, 2001. The Office shows that the Office mailed the appropriate notice to appellant at the correct address. The record supports that

[8] 20 C.R.F. §§ 10.137(a), 10.137(c) (revised as of April 1, 1997).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e. (January 1999).

appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Board finds that appellant abandoned her request for an oral hearing before an Office hearing representative.

The May 5, 2003 and September 13, 2002 decisions of the Office of Workers' Compensation are hereby affirmed.

Dated, Washington, DC
November 4, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member