

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
J.K., Appellant)	
)	
and)	Docket No. 08-1449
)	Issued: April 17, 2009
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Green Bay, WI, Employer)	
_____)	

Appearances:
Jacqueline Traynere, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 21, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 27, 2007 merit decision denying her claim for employment-related conditions other than those already accepted and its March 20, 2008 nonmerit decision finding that she abandoned her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained employment-related conditions other than the accepted sprains of the anterior cruciate and medial collateral ligaments in her left knee; and (2) whether the Office properly found that she abandoned her request for a hearing.

FACTUAL HISTORY

On February 21, 2007 appellant, then a 45-year-old transportation security screener, filed a claim alleging that she sustained injury to her left leg due to the repetitive duties she performed while screening luggage.¹ She initially sought treatment on February 8, 2007 from Dr. Robert Catana, a Board-certified orthopedic surgeon. Appellant reported that her job required her to stay on her feet and bend, squat and twist and that she had “left leg complaints starting from her left hip to her left knee with problems down towards her left foot.” She had this problem for two months or so and it became more severe in about the last two to three weeks or so.² Dr. Catana diagnosed trochanteric bursitis of the left hip, lateral meniscal pathology, synovitis of the left knee and left leg radiculopathy. He stated that pathology of appellant’s left femur needed to be ruled out. Magnetic resonance imaging (MRI) scan of appellant’s left knee on February 14, 2007 showed joint effusion, Baker’s cyst and strains of the medial collateral and anterior cruciate ligaments.

In a February 20, 2007 report, Dr. Catana noted the February 14, 2007 MRI scan results and stated, “I do feel that [appellant’s] problem with her knees especially sprain of the medial collateral ligament and anterior cruciate ligament is most likely due to the repetitive type of work that she has, constantly lifting, bending and twisting activity.”³ In a February 27, 2007 report, he again mentioned the MRI scan results and stated that appellant could continue to perform her regular work for the employing establishment.⁴ In a February 27, 2007 form report, Dr. Catana diagnosed trochanteric bursitis of the left hip and lateral meniscal pathology and checked a “yes” box indicating that these conditions were caused or aggravated by the reported work activities of bending and squatting frequently.⁵

Appellant alleged that the reports of Dr. Catana showed that she sustained employment-related injuries other than left anterior cruciate and medial collateral ligament strains, including a Baker’s cyst and synovitis of her left knee. On August 27, 2007 the Office requested that appellant submit additional factual and medical evidence in support of her claim.⁶ In a September 10, 2007 letter, appellant attributed her condition to lifting heavy baggage and kneeling, squatting, stooping, twisting and bending while wandng and patting down passengers.

¹ Appellant listed her address of record on the claim form. She continued to use this address in her communications with the Office.

² Appellant reported that there was no history of trauma.

³ Appellant reported that “somebody hit the side of her left foot and caused extreme pain to her left knee.” She did not provide any more details about this incident.

⁴ Other attending physicians later restricted appellant from performing such duties as squatting or kneeling.

⁵ In a March 13, 2007 report, Dr. Catana recommended aggressive physical therapy for appellant’s left knee condition.

⁶ On August 13, 2007 appellant claimed that she sustained a recurrence of disability on August 1, 2007 due to her employment injury. At this point, the Office had not accepted her claim and she had not stopped work.

In an August 31, 2007 report, Dr. Dennis B. Phillips, an attending osteopath, noted that appellant's reported reason for seeing him was "evaluation for work comp[ensation] status on left knee for possible orthopedic referral." Appellant reported that her symptom onset was approximately in October 2006 while performing baggage duties and that her left knee swelled and her pain increased dramatically on February 8, 2007. Dr. Phillips diagnosed left knee pain and effusion by history, apparent subacute continuing symptoms of left knee collateral ligament strain, anterior cruciate ligament strain and Baker's cyst with acute exacerbation two weeks prior. In an August 31, 2007 report, he diagnosed subacute and recurrent strains of the anterior cruciate ligament and the medial and lateral collateral ligaments of the left knee with a Baker's cyst and effusion. Dr. Phillips checked a box indicating that the conditions were "work related."

The findings of the MRI scan testing of appellant's left knee showed a small suprapatellar effusion, small popliteal cyst and "findings highly suspicious for tears of the lateral meniscus." In a September 13, 2007 report, Dr. Isidoro Zambrano, an attending Board-certified orthopedic surgeon, reported that appellant had a work-related injury dating back to October 2006. Appellant reported that she injured her left knee while she was at work handling some bags. Dr. Zambrano diagnosed internal derangement of the left knee and left greater trochanteric hip bursitis. On September 26, 2007 he performed partial excisions of the medial and lateral menisci of appellant's left knee. The surgery was authorized by the Office.⁷

In a September 27, 2007 decision, the Office accepted that appellant sustained employment-related sprains of the anterior cruciate ligament and the medial collateral ligament in her left knee. In another September 27, 2007 decision, it denied appellant's claim for a Baker's cyst and synovitis of her left knee on the grounds that she did not submit sufficient medical evidence for such injuries.

On October 26, 2007 appellant requested an oral hearing before an Office hearing representative and noted that she would submit additional medical evidence to support her claim prior to the hearing. She listed her address of record on the appeal request form which was the same address that she had previously reported.

Appellant submitted an October 12, 2007 report in which Dr. Zambrano stated that appellant's claim for a Baker's cyst and synovitis of her left knee should be allowed as employment related. Dr. Zambrano indicated that the Baker's cyst was present in appellant's first MRI scan and the synovitis was caused by the internal derangement in her knee. Dr. Zambrano stated:

"In my opinion [appellant's] gait was abnormal during this time causing her to develop right hip greater trochanteric bursitis. I do believe that these symptoms collectively were caused by her work duties as I have reviewed these duties with her. At this time she appears to be responding well to the left knee arthroscopy as well as right hip steroid injection that was given to her. In reviewing her records from her initial physician out in Florida, the next step was arthroscopic surgery. In this case as [appellant] followed up with me there was definitive evidence on

⁷ In a September 11, 2007 form report, Dr. Zambrano had diagnosed "left knee injury" and checked a box indicating that it was "work related." On September 17, 2007 he diagnosed "left knee internal derangement."

the MRI [scan] as well as her physical exam[ination] and clinical history to warrant left knee arthroscopy and once again I do believe that all these symptoms arose from her initial work comp[ensation] injury as well as from her job duties.”

In a November 1, 2007 letter, the Office acknowledged appellant’s hearing request and notified her that her hearing would be docketed within a period of six to eight months. This letter was sent to appellant’s address of record. The Office advised appellant that if she failed to appear for the hearing or did not provide documentation of her reasons for failing to attend the hearing within 10 days of the scheduled hearing, the hearing request would be deemed abandoned. On January 29, 2008 it notified her that the hearing had been scheduled to take place by telephone on March 4, 2008 at 9:00 a.m. Eastern Time. The Office provided appellant a toll-free number to call at the specified time. The notice was sent to appellant’s address of record. The hearing was held as scheduled, but appellant failed to appear by neglecting to call the provided number at the designated time.

In a March 20, 2008 decision, the Office determined that appellant abandoned her request for a hearing. It indicated that she did not appear for her scheduled hearing or contact the Office before or after the hearing to explain her failure to appear.⁸

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act⁹ has the burden of establishing the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹⁰ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

⁸ On appeal appellant advised the Board that, as of January 18, 2008, her address had changed.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹¹ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(ee), (q); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS -- ISSUE 1

The Office accepted that by early 2007 appellant sustained employment-related sprains of the anterior cruciate and medial collateral ligaments in her left knee due to engaging in repetitive duties such as lifting heavy baggage and kneeling, squatting, stooping, twisting and bending while wandering and patting down passengers. Appellant alleged that she sustained additional injuries due to her work duties. In a September 27, 2007 decision, the Office determined that appellant did not submit medical evidence establishing that she had a Baker's cyst and joint effusion in her left knee due to her work duties.

The Board notes that the Office unnecessarily defined appellant's claim as being limited to the question of whether she sustained a Baker's cyst and joint effusion in her left knee due to employment factors. As noted above, the question is whether appellant met her burden of proof to establish that she sustained an employment injury other than the accepted sprains of the anterior cruciate and medial collateral ligaments in her left knee. The Board finds, however, that appellant has not submitted sufficient medical evidence to establish that she sustained an employment injury other than the accepted sprains in her left knee.

In a February 20, 2007 report, Dr. Catana, an attending Board-certified orthopedic surgeon, mentioned the February 14, 2007 MRI scan results and stated, "I do feel that [appellant's] problem with her knees especially sprain of the medial collateral ligament and anterior cruciate ligament is most likely due to the repetitive type of work that she has, constantly lifting, bending and twisting activity." Although he mentioned that the MRI scan results included a Baker's cyst and joint effusion in appellant's left knee, he did not provide any opinion that these conditions or any other condition besides the anterior cruciate and medial collateral ligament sprains were employment related. This report is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship with respect to conditions other than the accepted sprains.¹³

¹² See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹³ 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). Dr. Catana did not fully define what he meant by appellant's "problem with her knees" and did not identify all the medical conditions this term would include.

In a February 27, 2007 form report, Dr. Catana diagnosed trochanteric bursitis of the left hip and lateral meniscal pathology and checked a “yes” box indicating that these conditions were caused or aggravated by the reported work activities of bending and squatting frequently. The Board has held, however, that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish causal relationship.¹⁴ Appellant’s burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Catana did no more than check “yes” to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant’s burden of proof. He did not describe appellant’s work duties in any detail or explain how they could cause conditions other than the accepted sprains.

In an August 31, 2007 form report, Dr. Phillips, an attending osteopath, diagnosed subacute and recurrent strains of the anterior cruciate ligament and the medial and lateral collateral ligaments of the left knee with a Baker’s cyst and effusion. He checked a box indicating that the conditions were “work related.” Dr. Phillips’ report would also be of limited probative value because he only checked a box indicating that the diagnosed Baker’s cyst and effusion of appellant’s left knee were employment related. He also did not describe appellant’s work duties in any detail or explain how they could cause such conditions. In a September 13, 2007 report, Dr. Zambrano, an attending Board-certified orthopedic surgeon, stated that appellant reported that she had a work-related injury dating back to October 2006. He diagnosed internal derangement of the left knee and left greater trochanteric hip bursitis. However, Dr. Zambrano did not specify the cause of these conditions. In a September 11, 2007 form report, he diagnosed “left knee injury” and checked a box indicating that it was “work related.” Dr. Zambrano did not define the nature of the left knee injury or provide any opinion on causal relationship other than that provided by the box checked.

For these reasons, appellant has not submitted sufficient medical evidence to establish that she sustained an employment injury other than the accepted sprains of the anterior cruciate and medial collateral ligaments in her left knee.¹⁵

¹⁴ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁵ Appellant submitted additional evidence after the Office’s most recent merit decision of September 27, 2007. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process. *See* 5 U.S.C. § 8128; 20 C.F.R. §§ 10.605 to 10.607.

LEGAL PRECEDENT -- ISSUE 2

The authority governing abandonment of hearings 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.

"(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.

"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.

"(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.

"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."¹⁶

It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.¹⁷

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

¹⁷ *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

ANALYSIS -- ISSUE 2

In the present case, the Office scheduled a telephonic hearing with an Office hearing representative on a specific date at a specific time.¹⁸ The record shows that it mailed appropriate notice to the claimant at her last known address of record.¹⁹ The record also supports that appellant did not request postponement, that she failed to appear for 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 Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.²⁰

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment injury other than the accepted sprains of the anterior cruciate and medial collateral ligaments in her left knee. The Board further finds that the Office properly found that she abandoned her request for a hearing.

¹⁸ Appellant was provided with a toll-free telephone number to call at the designated time for the hearing.

¹⁹ On appeal, appellant advised the Board that, as of January 18, 2008, her address had changed. She did not advise the Office of this address change and the Office properly sent a hearing notice to her last known address. Appellant did not submit evidence to rebut the presumption of receipt raised by the fact that the hearing notice was properly addressed and duly mailed. *See supra* note 17 and accompanying text.

²⁰ *See also Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 20, 2008 and September 27, 2007 denial decisions are affirmed.

Issued: April 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board