

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

THOMAS J. WILLIAMS, Appellant	)	
	)	
and	)	Docket No. 03-1623
	)	Issued December 27, 2004
U.S. POSTAL SERVICE, POST OFFICE, Chestnut Hills, MA, Employer	)	
	)	

*Appearances:*  
Thomas J. Williams, pro se  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On June 9, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated May 16, 2003 which found that he had abandoned his request for a hearing. The Board also has jurisdiction over a September 3, 2002 Office decision which found that appellant failed to establish that his left wrist tendinitis was causally related to factors of his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the September 3, 2002 and May 16, 2003 decisions.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that his left wrist tendinitis was causally related to factors of his federal employment; and (2) whether appellant abandoned his request for a hearing.

**FACTUAL HISTORY**

On May 31, 2002 appellant, then a 46-year-old distribution and window clerk, filed an occupational disease claim alleging that he sustained left wrist tendinitis on January 18, 2002 due to lifting heavy tubs of mail at work.

In a clinical note dated May 6, 2002, Dr. Elizabeth M. Monteiro, a Board-certified internist, indicated that appellant had experienced left wrist pain for several months. She noted, “works @ po” and “lifts a lot.” Dr. Monteiro did not make a diagnosis. A May 8, 2002 x-ray report indicated a normal examination.

In notes dated May 31, 2002, Dr. Monteiro diagnosed left wrist tendinitis but did not provide an opinion as to the cause of the condition.

By letter dated June 20, 2002, the Office asked appellant to provide additional information in support of his claim including a detailed description of the employment activities that he believed contributed to his left wrist tendinitis and a comprehensive medical report from his treating physician with a rationalized opinion on the cause of his condition.

In a statement dated July 15, 2002, appellant stated that his left wrist tendinitis was caused by having to move heavy tubs of mail every day for one to two hours a day.

By decision dated September 3, 2002, the Office denied appellant’s claim on the grounds that the medical evidence failed to establish that his left wrist tendinitis was causally related to factors of his employment.

By letter dated September 25, 2002, appellant requested an oral hearing before an Office hearing representative.

On March 18, 2003 the Office sent appellant written notification that a hearing was scheduled for April 30, 2003. Appellant failed to attend the hearing.

By decision dated May 16, 2003, the Office found that appellant abandoned his request for a hearing. The Office noted that the hearing was scheduled for April 30, 2003, that appellant received written notification of the hearing 30 days in advance, that he failed to appear and that the record contained no evidence that appellant contacted the Office to explain his failure to appear.

### **LEGAL PRECEDENT -- ISSUE 1**

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.<sup>1</sup>

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<sup>1</sup> *Solomon Polen*, 51 ECAB 341 (2000).

### **ANALYSIS -- ISSUE 1**

Appellant submitted a May 6, 2002 note from Dr. Monteiro who indicated that he had experienced left wrist pain for several months. She noted “works @ po” and “lifts a lot.” Dr. Monteiro did not make a diagnosis. Although Dr. Monteiro indicated in her May 6, 2002 note that appellant lifted “a lot” at his job, this note lacks a detailed description of appellant’s work duties or the specific circumstances of the alleged injury. As noted above, a May 8, 2002 x-ray report indicated a normal examination for appellant’s left wrist. In a May 31, 2002 medical note, Dr. Monteiro diagnosed left wrist tendinitis. However, she did not provide an opinion as to the cause of this condition. There is no rationalized medical evidence of record, based on a complete and accurate factual and medical background, establishing a causal relationship between appellant’s left wrist tendinitis and specific factors of his employment. Therefore, appellant did not meet his burden of proof to establish that his left wrist tendinitis was causally related to factors of his federal employment.

### **LEGAL PRECEDENT -- ISSUE 2**

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 scheduled 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. 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.”<sup>2</sup>

These regulations, however, were again revised as of April 1, 1999. 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.<sup>3</sup> 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.

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<sup>2</sup> 20 C.F.R. §§ 10.137(a), 10.137(c) (revised as of April 1, 1997).

<sup>3</sup> 20 C.F.R. § 10.622(b) (1999).

The legal authority governing abandonment of hearings 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.

“(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]....

“(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.”<sup>4</sup>

**ANALYSIS -- ISSUE 2**

In this case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on April 30, 2003. The record shows that the Office mailed appropriate notice to the claimant 30 days in advance of the hearing date at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.<sup>5</sup> As the circumstances of this case meet the conditions for abandonment specified in the Office's procedure manual, the Office properly

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

<sup>5</sup> On appeal, appellant states that he was busy with personal problems at the time of the scheduled hearing and forgot about it.

found that appellant abandoned his request for an oral hearing before an Office hearing representative.<sup>6</sup>

**CONCLUSION**

The Board finds that appellant failed to establish that his left wrist tendinitis was causally related to factors of his federal employment. The Board further finds that appellant abandoned his request for a hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 16, 2003 and September 3, 2002 are affirmed.

Issued: December 27, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>6</sup> See *Claudia J. Whitten*, 52 ECAB 483 (2001).