

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

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**WILBUR W. HOWARD, JR., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
LOMA LINDA HOSPITAL, Yucca Valley, CA,  
Employer**

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**Docket No. 05-1295  
Issued: October 18, 2005**

*Appearances:*  
*Wilbur W. Howard, Jr., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 31, 2005 appellant filed a timely appeal of the June 19, 2004 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim and an April 20, 2005 nonmerit decision which found that he abandoned his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merit and nonmerit decisions.

**ISSUES**

The issues are: (1) whether appellant sustained an injury in the performance of duty on August 29, 2003; and (2) whether the Office properly found that appellant abandoned his request for a hearing.

**FACTUAL HISTORY**

On April 27, 2004 appellant, a 67-year-old mail gardener, filed a claim for a traumatic injury occurring on August 29, 2003 when he slipped on waxy material and landed on a

lawnmower injuring his pelvis. Appellant submitted an April 27, 2004 physician election form, an injury report dated September 17, 2003 and an accident report dated September 11, 2003.

By letter dated May 18, 2004, the Office advised appellant that the evidence received was insufficient to establish his claim. The evidence failed to support a timely notification of the work injury, there was no diagnosis of any condition resulting from the August 29, 2003 incident and there was no physician's opinion advising how the August 29, 2003 incident resulted in a medical condition. Appellant was advised of the type of medical and factual evidence needed to establish his claim and afforded 30 days to submit the requested information.

In a May 24, 2004 statement, appellant provided additional factual information. He noted reporting the incident to his supervisor and advised that he learned in January 2004 that his pelvis had a hairline fracture. Appellant advised that narrative medical and documentation would follow under separate cover. No medical evidence, however, was received. The employing establishment advised that they had no comments surrounding the August 29, 2003 work incident.

By decision dated June 19, 2004, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that a medical condition or medical diagnosis resulted from the accepted incident.

By letter dated July 8, 2004, appellant requested a hearing on the June 19, 2004 decision. In a letter dated August 2, 2004, the Office acknowledged receipt of appellant's request for an oral hearing. On February 2, 2005 the Office sent a notice to appellant, at his address of record, that a hearing would be held on Thursday, March 17, 2005 at 8:00 a.m. Appellant did not appear for the scheduled hearing.

By decision dated April 20, 2005, the Office determined that appellant had abandoned his request for a hearing, as he received notice 30 days in advance but did not appear. Appellant did not contact the Office prior to or subsequent to the scheduled hearing to explain his failure to appear.

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

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or 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.<sup>1</sup> These are the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>3</sup>

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

The Office found that appellant experienced the August 29, 2003 employment incident. However, it denied the claim because of his failure to submit medical evidence diagnosing a condition arising from the August 29, 2003 employment incident.

On May 18, 2004 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant responded in a May 24, 2004 statement that he sustained a pelvis injury and that narrative medical documentation would follow under separate cover. However, no such medical evidence was provided. The record does not otherwise contain any medical evidence explaining how the August 29, 2003 employment incident caused or aggravated any pelvis condition.

An award of compensation may not be based on surmise, conjecture or speculation or a claimant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that a claimant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.<sup>4</sup>

Appellant has not submitted the necessary medical evidence to establish his claim.

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). The Board notes that appellant provided evidence to support that his immediate superior had actual knowledge of the work-related injury within 30 days of the August 29, 2003 incident. Accordingly, the Office properly found that appellant's traumatic injury claim filed on April 27, 2004 was timely. See 5 U.S.C. § 8122(a); *Garyleane A. Williams*, 44 ECAB 441 (1993).

<sup>3</sup> *Larry D. Dunkin*, 56 ECAB \_\_\_\_ (Docket No. 04-1949, issued December 22, 2004).

<sup>4</sup> *Paul Foster*, *supra* note 1; *Thomas A. Faber*, 50 ECAB 566 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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

With respect to abandonment of hearing requests, Chapter 2.1601.6(e) of the Office's procedure manual provides in relevant part:

"(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, [the 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 [district Office]....

"(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [the Branch of Hearings and Review] 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 [the Branch of Hearings and Review] 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>5</sup>

## **ANALYSIS -- ISSUE 2**

In finding that appellant abandoned his March 17, 2005 request for a hearing, the Office determined that a hearing had been scheduled in Long Beach, California on March 17, 2005. Appellant received written notification of the hearing 30 days in advance, but failed to appear for the hearing. The record contains no evidence that he contacted the Office to explain his failure to attend the hearing. Prior to the scheduled hearing, appellant did not request postponement and, subsequent to the time of the scheduled hearing, appellant did not provide any explanation for his failure to appear at the hearing.

Consequently, the record establishes that appellant did not request postponement of the hearing date, failed to appear at the scheduled hearing and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the criteria for abandonment as specified in Chapter 2.1601.6(e) of the procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also* Claudia J. Whitten, 52 ECAB 483, 484-85 (2001).

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on August 29, 2003. The Board further finds that the Office properly determined that appellant abandoned his request for a hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 20, 2005 and June 19, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 18, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board