



tuberculosis test was employment related. He noted that some of the patients he treated had been diagnosed with tuberculosis.

On November 9, 2004 the Office requested that appellant submit additional evidence including a detailed description of the employment activities he believed contributed to his pulmonary condition. The Office instructed him to submit comprehensive medical reports addressing the cause and extent of the claimed pulmonary condition. Appellant was afforded 30 days to submit the requested factual and medical evidence.

On December 13, 2004 the Office received a copy of appellant's position description and an undated letter from Mary Walker, acting clinical coordinator mental health service line. Ms. Walker noted that as appellant's supervisor she attributed his condition to "his contact with veterans in his official capacity." Ms. Walker noted that there was documentation showing that appellant treated patients who tested positive for tuberculosis.

In a February 11, 2005 decision, the Office denied appellant's claim, finding that he failed to establish that he sustained an injury in the performance of duty. The Office found that he "may have had the exposure claimed," but noted that he failed to submit any medical evidence in support of his claim.

On March 3, 2005 appellant requested an oral hearing and submitted medical evidence in support of his request.

In a notice dated May 3, 2006, the Office informed appellant that a telephonic hearing on his claim would be held on June 12, 2006. He was advised to call the toll free number provided at the scheduled hearing time and to enter the pass code provided when prompted. Appellant did not appear.

By decision dated July 10, 2006, the Office determined that appellant had abandoned his request for a hearing. It noted that he failed to appear for the scheduled telephonic hearing on June 12, 2006 and had not contacted the Office either before or after the scheduled hearing to explain his failure to appear.

**LEGAL PRECEDENT -- ISSUE 1**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proving the essential elements of his claim by the weight of the reliable, probative and

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>2</sup>

In an occupational disease claim, to establish that an injury was sustained in the performance of duty, 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.<sup>3</sup>

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

The Office did not dispute that appellant was exposed to patients with positive Tuberculin test results. However, at the time the Office issued its decision on February 10, 2006, the record was devoid of any medical information that would support appellant's assertion that he sustained tuberculosis while in the performance of duty. There is no medical evidence documenting an employment-related medical condition.

In this case, appellant did not provide the required medical evidence necessary to establish a *prima facie* claim for compensation benefits under the Act.<sup>4</sup> Although Ms. Walker attributed appellant's condition to "his contact with veterans in his official capacity," she is not a physician as defined under the Act<sup>5</sup> and thus her opinion does not constitute competent medical opinion evidence. Accordingly, appellant has failed to establish that he sustained an injury in the performance of duty.

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<sup>2</sup> 20 C.F.R. § 10.115(e), (f); *see D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Donna M. Schmiedeknecht*, 56 ECAB \_\_\_\_ (Docket No. 05-494, issued September 2, 2005); *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Gary M. DeLeo*, 56 ECAB \_\_\_\_ (Docket No. 05-1099, issued August 8, 2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>3</sup> *Daniel O. Vasquez*, 57 ECAB \_\_\_\_ (Docket No. 06-568, issued May 5, 2006); *Donald W. Wenzel*, 56 ECAB \_\_\_\_ (Docket No. 05-146, issued March 17, 2005); *Victor J. Woodhams*, *supra* note 2.

<sup>4</sup> *See Richard A. Weiss*, 47 ECAB 182 (1995).

<sup>5</sup> 5 U.S.C. § 8101(2).

## LEGAL PRECEDENT -- ISSUE 2

With respect to hearing requests, Chapter 2.1601.6(e) 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 hearing request.

“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 a 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>6</sup>

## ANALYSIS -- ISSUE 2

In finding that appellant had abandoned his March 3, 2005 request for a hearing the Office noted that a telephone hearing had been scheduled for June 12, 2006. The record shows that the Office mailed appellant appropriate notice of the hearing to his last known address. He received written notification of the hearing 30 days in advance, but failed to telephone the hearing representative as instructed. The record contains no evidence that appellant contacted the Office to reschedule the hearing or explain his failure to participate in the scheduled telephonic hearing.

The Board finds that the record contains no evidence that appellant requested postponement of the hearing. Appellant failed to participate in the scheduled hearing and did not provide any notification of such failure within 10 days of the scheduled hearing. As the circumstances of this case meet the criteria for abandonment as provided in Chapter 2.1601.6(e) of the Office's procedure manual, the Board finds that appellant abandoned his request for an oral hearing.

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearing and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also Claudia J. Whitten*, 52 ECAB 483 (2001); 20 C.F.R. § 10.622.

**CONCLUSION**

The Board finds that appellant failed to establish that his tuberculosis condition was sustained in the performance of duty. The Board further finds that the Office properly determined that he abandoned his request for an oral hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 10 and February 10, 2006 are affirmed.

Issued: March 2, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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