

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

C.B., Appellant)

and)

DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE, YOSEMITE)
NATIONAL PARK, CA, Employer)

Docket No. 08-575
Issued: October 15, 2008

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2007 appellant filed a timely appeal from a November 13, 2006 decision of the Office of Workers' Compensation Programs, denying his claim for an injury on August 3, 2006 and a May 7, 2007 decision finding that he abandoned his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the November 13, 2006 and May 7, 2007 decisions.

ISSUES

The issues are: (1) is whether appellant sustained an injury on August 3, 2006 while in the performance of duty; and (2) whether the Office properly found that he abandoned his request for a hearing.

FACTUAL HISTORY

On October 3, 2006 appellant, then a 26-year-old trail worker, filed a claim for a traumatic injury alleging that on August 3, 2006 he felt a popping and intense pain and numbness

in his right wrist while rolling an approximately three foot section of a log out of a creek. On September 13 or 14, 2006 he experienced right wrist popping and pain while rolling a rock and his condition worsened on September 28, 2006 while he was driving a motorized wheelbarrow. Since September 28, 2006, appellant had experienced right wrist popping, pain and numbness at least once a day, even while performing tasks such as raking soil or shutting a door.

By letter dated October 11, 2006, the Office requested additional information including medical evidence containing a diagnosis and an explanation as to how the diagnosed condition was causally related to his work activity on August 3, 2006.

An October 3, 2006 report from a nurse practitioner contains a diagnosis of a tendon injury to the right wrist occurring on August 3, 2006 when appellant was rolling a log out of a creek. An October 18, 2006 work status report from a health care provider whose signature is illegible “diagnosed” a right wrist injury occurring on October 3, 2006.

By decision dated November 13, 2006, the Office denied appellant’s claim on the grounds that the evidence did not establish that the August 3, 2006 incident occurred at the time, place and in the manner alleged and the medical evidence did not establish that he sustained a medical condition as a result of the August 3, 2006 incident.

On December 12, 2006 appellant requested an oral hearing.

By notice dated March 20, 2007, the Office advised appellant that a hearing was scheduled for April 23, 2007 and provided the place and time. The notice was sent to his address of record. It was not returned to the Office as undeliverable. Appellant did not appear for the scheduled hearing.

By decision dated November 13, 2006, the Office found that appellant had abandoned his request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must

¹ 5 U.S.C. §§ 8101-8193.

² *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *John J. Carlone*, 41 ECAB 354 (1989).

submit medical evidence to establish that the employment incident caused a personal injury.⁴ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes 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. 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.⁵

ANALYSIS -- ISSUE 1

Appellant alleged that on August 3, 2006 he injured his right wrist while rolling an approximately three foot section of a log out of a creek. On September 13 or 14, 2006 he experienced right wrist popping and pain while rolling a rock. Appellant's condition worsened on September 28, 2006 while he was driving a motorized wheelbarrow. The employing establishment did not dispute his description of his work activity on August 3, 2006 and he provided specific details regarding the job activities that he believed caused or aggravated his right wrist condition. Accordingly, the Board finds that appellant has established that the August 3, 2006 work incident occurred at the time, place and in the manner alleged. The remaining issue is whether appellant submitted medical evidence establishing that the August 3, 2006 employment incident caused an injury to his right wrist.

An October 3, 2006 report from a nurse practitioner contains a diagnosis of a tendon injury to appellant's right wrist occurring on August 3, 2006 when he was rolling a log out of a creek. Reports from a nurse practitioner are of no probative value. Registered nurses, licensed practical nurses and physician's assistants are not "physicians" as defined under the Act and their opinions are of no probative value.⁶ Therefore, the report from the nurse practitioner is insufficient to establish that appellant sustained a right wrist injury causally related to his work activity on August 3, 2006.

An October 18, 2006 work status report from a health care provider whose signature is illegible "diagnosed" a right wrist injury occurring on October 3, 2006. It is not clear whether this report is from another nurse practitioner or a physician. In any event, there is no specific diagnosis and the date of injury is incorrect, October 3, 2006 rather than August 3, 2006. Due to

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 4.

⁶ See 5 U.S.C. § 8101(2) which provides: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law"; see also *Roy L. Humphrey*, 57 ECAB 238 (2005).

these deficiencies, this report is not sufficient to establish that appellant sustained a work-related right wrist injury on August 3, 2006.

Appellant failed to provide a medical report with a diagnosis and medical rationale explaining how the diagnosed medical condition is causally related to his activities on August 3, 2006. Accordingly, the Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

The statutory right to a hearing under the Act, 5 U.S.C. § 8124(b)(1), follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows: “Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary [of Labor] under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”

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 [d]istrict Office.”⁷

ANALYSIS -- ISSUE 2

The record establishes that on March 20, 2007, in response to appellant’s request for an oral hearing, the Office mailed an appropriate notice of the scheduled April 23, 2007 hearing. The Board notes that the notice was sent more than 30 days prior to the hearing. Appellant asserts that he never received a copy of the hearing notice. However, the record reflects that a copy of the March 20, 2007 hearing notice was mailed to the correct address of record for appellant and was not returned as undeliverable.⁸ The Board has found that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business, such as in the course of the Office’s daily activities, is presumed to have arrived at the mailing address in due course.⁹ This is known as the “mailbox rule.” As the record reflects that the Office mailed a hearing notice to appellant’s address of record, it is presumed that it arrived at

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999); *see also G.J.*, 58 ECAB ___ (Docket No. 07-1028, issued August 16, 2007).

⁸ Appellant sent the Office a change of address on October 23, 2006. March 20, 2007 hearing notice was mailed to this address.

⁹ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004); *James A. Gray*, 54 ECAB 277 (2002).

his mailing address. The record shows that appellant did not request a postponement of the hearing and failed to provide an explanation for his failure to attend within 10 days of the scheduled date of the hearing. As the circumstances of this case meet the criteria for abandonment, the Board finds that appellant abandoned his request for a hearing.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right wrist injury on August 3, 2006 while in the performance of duty. However, the Office's November 13, 2006 decision is modified to reflect that the denial of his claim is based on the lack of sufficient medical evidence. The Board further finds that the Office properly found that appellant abandoned his request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 7, 2007 is affirmed. The November 13, 2006 decision is affirmed, as modified.

Issued: October 15, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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