

tray of mail. A September 19, 2007 medical report of Dr. Wayne Henschel, an osteopath, stated that appellant sustained an abdominal hernia. He referred him to a surgeon for repair of the hernia.

A September 19, 2007 e-mail message from the employing establishment stated that appellant was seen in the health unit on that date. Subsequently, he was referred to a health care facility and was seen by Dr. Henschel who opined that his current condition was not work related.

By letter dated October 26, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence, including a rationalized medical report from an attending physician which described his symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in appellant's federal employment contributed to his condition. Appellant was afforded 30 days to submit the requested evidence. He did not respond.

By decision dated November 26, 2007, the Office denied appellant's claim. It found the evidence sufficient to establish that the September 19, 2007 incident occurred at the time, place and in the manner alleged. However, the medical evidence was insufficient to establish an injury causally related to the accepted employment incident.

An April 25, 2007 report of Dr. John E. Meilahn, a Board-certified surgeon, stated that appellant experienced occasional discomfort in his left lower abdomen that was related to his bowel movements. He reported that an upper midline incision had healed. Dr. Meilahn did not detect any herniation in that area. In a September 12, 2007 report, he stated that nearly one year had passed since appellant's gastric bypass surgery. Dr. Meilahn noted an upper midline incision that had a reducible incisional hernia at its base along the right side. On November 19, 2007 he surgically repaired the incisional hernia. In a November 21, 2007 discharge summary, Dr. Meilahn reiterated his prior diagnosis of incisional hernia.

On December 21, 2007 appellant requested an oral hearing before an Office hearing representative regarding the November 26, 2007 decision. In a February 7, 2007 report, Dr. Meilahn stated that the sinus tract of the interior tract of his incision was shallow, but did not require repacking. He found no evidence of any discharge or cellulitis. In a November 30, 2007 report, Dr. Meilahn stated that appellant was status post incisional hernia repair. Appellant's midline incision was healing well, without infection, discharge, herniation or seroma. On December 12, 2007 Dr. Meilahn stated that appellant's prior open gastric bypass and subsequent wound infection may have predisposed him to an incisional hernia. He further stated that the repetitive nature of lifting at work could well have aggravated his hernia to the point where it required repair. In an October 18, 2007 report, Dr. Henschel stated that he could not conclude that appellant's abdominal hernia was work related since he had experienced abdominal pain for which he sought treatment from a surgeon prior to his initial examination.

On January 17, 2008 appellant informed the Office that he no longer wished to have an oral hearing. Instead, he wished to seek reconsideration. The Office advised him to submit a statement indicating that he wished to withdraw his request for a hearing and requesting

reconsideration. There is no evidence of record demonstrating that appellant submitted a request to withdraw his hearing.

By letter dated March 5, 2008, the Office informed appellant that an oral hearing would be held on April 10, 2008 at 1:00 p.m. It was mailed to his address of record. Appellant did not appear for his scheduled hearing.

By decision dated April 30, 2008, 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 of establishing 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 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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.⁴ Neither the fact that appellant's condition became apparent during a

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

period of employment nor his belief that the condition was caused by his employment, is sufficient to establish a causal relationship.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant lifted a tray of mail on September 19, 2007 while working as a mail handler at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that his diagnosed hernia was caused or aggravated by the September 19, 2007 employment incident.

Dr. Henschel's September 19, 2007 report stated that appellant sustained an abdominal hernia that required surgical repair. Dr. Meilahn's February 7, 2007 report stated that the sinus tract of the interior tract of appellant's incision was shallow, but did not require repacking. He found no evidence of any discharge or cellulitis. In a September 12, 2007 report, Dr. Meilahn stated that appellant was nearly one year after gastric bypass surgery, when he developed an upper midline incision that had a reducible incisional hernia at its base along the right side. In a November 19, 2007 surgical report, he stated that he repaired the incisional hernia. A November 21, 2007 discharge summary reiterated the diagnosis of incisional hernia. Dr. Meilahn's November 30, 2007 report stated that appellant was status post incisional hernia repair and that his midline incision was healing well, without infection, discharge, herniation or seroma. This evidence, however, is insufficient to establish appellant's claim. Neither Dr. Henschel nor Dr. Meilahn addressed how the diagnosed condition was caused or contributed to by the accepted September 19, 2007 employment incident. Rather, Dr. Meilahn noted that the hernia was located at the base of an incision related to prior gastric bypass surgery.

Dr. Meilahn's April 25, 2007 report stated that appellant's occasional discomfort in his left lower abdomen was related to his bowel movements. He further stated that an upper midline incision had healed and no herniation was detected in that area. Dr. Henschel's October 18, 2007 report stated that he could not opine whether appellant's abdominal hernia was work related since appellant had experienced abdominal pain and sought treatment from a surgeon prior to his initial examination. Neither, Dr. Meilahn nor Dr. Henschel opined that appellant sustained an incisional hernia caused or contributed to by the accepted employment incident.

Dr. Meilahn's December 12, 2007 report stated that appellant's prior open gastric bypass and subsequent wound infection may have predisposed him to an incisional hernia. He also stated that the repetitive nature of lifting by appellant at work "could" well have aggravated the hernia to the point where it required repair. The Board finds that Dr. Meilahn's opinion regarding causal relation is speculative in nature and, thus, insufficient to establish appellant's claim.⁶

⁵ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a hernia causally related to the accepted September 19, 2007 employment incident. Appellant did not meet his burden of proof.

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 [district Office].”⁷

ANALYSIS -- ISSUE 2

Appellant requested an oral hearing within 30 days of the Office’s November 26, 2007 decision denying his claim for compensation. His request was timely and entitled him to a hearing as a matter of right. On March 5, 2008 the Office notified appellant that an oral hearing would be held on April 10, 2008 at 1:00 p.m. The record shows that the Office mailed the notice to his address of record. On appeal, appellant stated that he failed to attend the scheduled hearing due to personal family problems. The record shows that appellant did not request postponement, he failed to appear at the scheduled hearing and, he failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As appellant did not meet any of the requirements specified in the Office procedure manual, the Board finds that he abandoned his request for an oral hearing before an Office hearing representative in this case.

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); *see also Claudia J. Whitten*, 52 ECAB 483 (2001).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a hernia while in the performance of duty on September 19, 2007, as alleged. The Board further finds that he abandoned his request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2008 and November 26, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 1, 2009
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