United States Department of Labor
Employees' Compensation Appeals Board

P.E., Appellant	)	
and	)	**Docket No. 10-791**
	)	**Issued: December 21, 2010**
U.S. POSTAL SERVICE, WESTERN FACILITIES SERVICE OFFICE, Englewood, CO, Employer	)	

Appearances:
Hank Royal, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 3, 2010 appellant, through her representative, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 11, 2009 denying her occupational disease claim. The Board also has jurisdiction over the January 4, 2010 nonmerit decision finding that she abandoned her hearing request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established an aggravation of her preexisting cervical strain and neck degenerative arthritis due to her employment duties; and (2) whether appellant abandoned her request for an oral hearing before an Office hearing representative.

FACTUAL HISTORY

On January 19, 2009 appellant, then a 53-year-old customer service representative, filed an occupational disease claim alleging that her job duties of prolonged sitting and data entry

aggravated her preexisting cervical strain and neck degenerative arthritis. She alleged that the change in her duty status and temporary job position caused the aggravation.

By letter dated January 23, 2009, the Office informed appellant that the evidence of record was insufficient to support her occupational disease claim and advised her as to the medical and factual evidence to submit.

In a January 23, 2009 report, Dr. Raeburn M. Jenkins, a treating Board-certified orthopedic surgeon, noted appellant's cervical problems began in 1986 when she was involved in an employment-related automobile accident. He noted that she had permanent work restrictions since 1992. Appellant attributed the worsening of her symptoms to a temporary job, which required extensive time on the telephone and sitting at a desk. Dr. Jenkins diagnosed degenerative cervical disc disease without myelopathy and cervical pain.

On February 18, 2009 Dr. Jenkins reported that appellant was seen for complaints of cervical pain and an evaluation for new permanent work restrictions to fit her new job. He diagnosed degenerative cervical disc disease without myelopathy and cervical pain.

By decision dated August 11, 2009, the Office denied appellant's claim. It found the medical evidence insufficient to establish that her degenerative cervical disc disease had been caused or aggravated by the work factors she identified.

In a letter dated September 8, 2009, appellant's representative requested an oral hearing before an Office hearing representative.

By letter dated November 4, 2009, appellant and her representative were advised as to the date, time and location for her hearing.

In a November 10, 2009 letter, appellant's representative requested a teleconference hearing instead of a video conference hearing.

The Office hearing representative, in a November 16, 2009 letter, advised that she was unable to accommodate appellant's request for a teleconference instead of an oral hearing. She stated that a review of the written record instead of an oral hearing was possible and that appellant should respond before the scheduled hearing date. No response was received.

By decision dated January 4, 2010, the Office hearing representative found that appellant had abandoned her request for an oral hearing.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition

for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[1]

Under the Federal Employees' Compensation Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[2] When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.[3]

Causal relationship is a medical issue[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[5] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty[8] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[9]

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim on January 19, 2009 alleging that her job duties of data entry and prolonged sitting aggravated her preexisting degenerative neck disease and cervical strain. The Board finds that the medical evidence of record does not contain probative medical opinion on the issue presented. In support of her claim, appellant submitted reports dated January 23 and February 18, 2009 from Dr. Jenkins, a treating Board-certified orthopedic surgeon, who reported in a January 23, 2009 report that her cervical problems began in 1986 as the result of an employment-related automobile accident and that she has had permanent work restrictions since 1992. Dr. Jenkins diagnosed degenerative cervical disc disease without myelopathy and cervical pain in his January 23 and February 18, 2009 reports. In a February 18, 2009 report, he stated that appellant was seen for her complaints of cervical

[1] *See O.W.*, 61 ECAB ___ (Docket No. 09-2110, issued April 22, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Ruby I. Fish*, 46 ECAB 276 (1994).

[2] *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

[3] *Id*.

[4] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010); *Michael S. Mina*, 57 ECAB 379 (2006).

[5] *W.D.*, 61 ECAB ___ (Docket No. 09-658, issued October 22, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[6] *J.J.*, 60 ECAB ___ (Docket No. 09-27, issued February 10, 2009; *Sedi L. Graham*, 57 ECAB 494 (2006).

[7] *D.G.*, 59 ECAB 734 (2008); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[8] *I.R.*, 61 ECAB ___ (Docket No. 09-1229, issued February 24, 2010); *Roy L. Humphrey*, *supra* note 1.

[9] *N.M.*, 60 ECAB ___ (Docket No. 08-2081, issued September 8, 2009); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

pain and permanent work restrictions to fit her new job. The opinion of Dr. Jenkins must be based on a complete factual and medical background, 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 compensable employment factors identified by the claimant. Because the reports from him do not reference contributing employment factors identified by appellant of data entry and prolonged sitting and also do not provide an opinion as to whether employment factors caused or adversely affected her cervical conditions, they are insufficient to meet her burden of proof.[10]

The Board finds that appellant failed to meet her burden of proof to establish a *prima facie* claim for compensation. Although appellant submitted a statement which identified the factors of employment that she believed caused or aggravated her preexisting conditions of cervical strain and degenerative neck disease, she failed to submit any probative medical evidence in support of her claim. The Office informed her of the need to submit a physician's opinion which explained how the claimed condition was causally related to the implicated employment factors. Appellant failed to submit any medical evidence sufficient to establish her claim.[11]

An award of compensation may not be based on surmise, conjecture or speculation.[12] Neither the fact that appellant's condition became apparent during a period of employment nor her belief that her condition was caused or aggravated by her employment is sufficient to establish causal relationship.[13] Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence. Consequently, appellant has not met her burden of proof to establish that preexisting degenerative neck disease and cervical strain is causally related to the employment factors of data entry and prolonged sitting that she identified. The Board will affirm the Office's August 11, 2009 decision.

LEGAL PRECEDENT -- ISSUE 2

The Office's regulations address the requirements for obtaining a hearing and provide that a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.[14] Scheduling is at the sole discretion of the hearing representative and is not reviewable.[15] The legal authority governing abandonment of hearings rests with the procedure manual of the Office which provides that a hearing can be considered abandoned only under very

[10] *See K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie Miller*, 53 ECAB 697 (2002) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

[12] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

[13] *W.D.*, *supra* note 5; *Sandra D. Pruitt*, *supra* note 7.

[14] 20 C.F.R. §§ 10.615, 10.616.

[15] *Id*. at § 10.622(b).

limited circumstances.[16] 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.[17] Under these circumstances, the Office will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.[18]

ANALYSIS -- ISSUE 2

On September 8, 2009 appellant's counsel requested a hearing. By letter dated September 15, 2009, the Office informed her of the hearing procedure and on November 4, 2009 informed appellant and her representative that a hearing was scheduled for December 8, 2009 at 10:00 a.m. and gave the address for the hearing. Appellant's representative requested a teleconference in a November 10, 2009 letter, which the Office hearing representative denied. The Office hearing representative advised appellant and her representative in a November 16, 2009 letter that she was unable to accommodate appellant's request for a teleconference instead of an oral hearing. She stated that a review of the written record instead of an oral hearing was possible and that appellant should respond before the scheduled hearing date. No response was received.

The Board thus finds that the November 4 and 16, 2009 Office communications put appellant on notice that a hearing had been scheduled and that her request for a telephonic hearing could not be accommodated. Appellant did not communicate with the Office either before or within 10 days after the scheduled hearing to request a postponement or explain why she did not appear for the scheduled hearing. The record thus supports that she did not request a postponement of the December 8, 2009 hearing, that she failed to appear by not arriving for the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.[19]

CONCLUSION

The Board finds that appellant did not establish that her preexisting cervical strain and degenerative neck disease had been aggravated by her employment duties and that she abandoned a hearing scheduled for December 8, 2009.

[16] *Claudia J. Whitten*, 52 ECAB 483 (2001).

[17] *G.J.*, 58 ECAB 651 (2007); *Levi Drew, Jr.*, 52 ECAB 442 (2001).

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also C.T.*, 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009); *G.J.*, *supra* note *id*.; *Chris Wells*, 52 ECAB 445 (2001).

[19] *Claudia J. Whitten*, *supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 4, 2010 and August 11, 2009 are affirmed.

Issued: December 21, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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