

On appeal, appellant contended that she was not able to attend the hearing as she did not have a telephone. In a letter dated August 8, 2012, she stated that she waited to use a neighbor's land line telephone and missed the scheduled hearing time.

FACTUAL HISTORY

On January 12, 2012 appellant, then a 33-year-old transportation security officer, filed a notice of occupational disease alleging that she developed bilateral hip and back pain from continuous standing on concrete floors over several years. In a letter dated January 20, 2012, OWCP requested that she provide additional factual and medical evidence in support of her claim. Appellant provided a January 12, 2012 statement advising that, in July 2011, she first experienced hip and back pain due to continuous standing on the concrete floors at the employing establishment. She also attributed her condition to walking up stairs in December 2011 when the airport elevator was out of service.

On January 5, 2012 Dr. Lori Beltran, an osteopath, provided work restrictions. Kathi Lampkin, a nurse practitioner, examined appellant on July 20, 2011 and diagnosed joint pain bilaterally in her legs and hips. She noted that appellant's symptoms were worsened by standing and that she often stood at work for long hours. Dr. Careen Whitley, a Board-certified family practitioner, examined appellant on August 5, 2011 for joint pain and depression. She diagnosed arthralgia at multiple sites, improved and depression, major disorder severe.

Dr. Whitley examined appellant on December 29, 2011 due to back pain which radiated to her left thigh and knees. She noted that appellant's symptoms were aggravated by sitting and walking. Dr. Whitley diagnosed back pain. On January 5, 2012 Dr. Beltran examined appellant for back pain. Appellant's back pain radiated to her left calf. She found muscle spasms on examination with a normal range of motion. In reports dated January 13, 2012, Dr. Whitley diagnosed chronic low back and hip pain with intermittent acute exacerbations. She provided work restrictions limiting appellant's standing to one hour with a 10- to 15-minute break and provided a lifting restriction of 10 pounds. Appellant underwent x-rays of the lumbosacral spine on January 17, 2012 which demonstrated mild lumbosacral scoliosis.

By decision dated February 21, 2012, OWCP denied appellant's occupational disease claim finding that she did not establish a causal relationship between her federal employment and her back condition of scoliosis.

Appellant requested an oral hearing on February 25, 2012. In a letter dated April 27, 2012, the Branch of Hearings and Review informed appellant that her hearing was scheduled for June 12, 2012 at 2:15 p.m. eastern time and provided her with a pass code and toll-free number. Appellant was directed to call the toll-free number a few minutes before the scheduled hearing time and when prompted enter the pass code to connect to the telephone hearing. The letter was sent to appellant's address of record.

In a decision dated July 17, 2012, OWCP found that appellant had received notification of the hearing scheduled on June 12, 2012, 30 days in advance, but failed to appear. It found no evidence of record to establish that appellant contacted OWCP either prior to or subsequent to

the scheduled hearing to explain her failure to appear. OWCP determined that she had abandoned her request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."²

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

ANALYSIS -- ISSUE 1

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish a causal relationship between her diagnosed lumbosacral scoliosis and the implicated employment duties of standing on concrete floors and walking up stairs. Appellant submitted medical reports from Dr. Whitley and Dr. Beltran diagnosing back pain and depression. The Board has held that the diagnosis of pain is generally a symptom and not a firm medical diagnosis.⁴ Neither physician offered any other diagnosis of her physical condition. Dr. Whitley and Dr. Beltran did not address how appellant's back pain was due to her employment duties. Therefore, the reports are not sufficiently detailed to meet appellant's burden of proof in establishing an occupational disease claim.

While appellant underwent x-rays which demonstrated lumbosacral scoliosis, there is no medical evidence of record relating this condition to her employment activities of standing on concrete floors or walking on stairs. Without a medical opinion on causal relationship, she has not established that this condition is an occupational disease.

² 20 C.F.R. § 10.5(q).

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁴ *Robert Broome*, 55 ECAB 339 (2004).

Appellant also submitted a note from a nurse practitioner. Nurse practitioners are not physicians under FECA and are not competent to render a medical opinion.⁵ As this note was not signed by the physician it has no probative value in establishing appellant's claim.⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

OWCP regulations provide guidance as to how a claimant may postpone a hearing, and when a hearing will be considered to be abandoned. Section 10.622 of the regulations provide:

“(c) Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant and representative, OWCP will, upon submission of proper written documentation of unavoidable serious scheduling conflicts (such as court-ordered appearances/trials, jury duty or previously scheduled outpatient procedures), entertain requests from a claimant or his representative for rescheduling as long as the hearing can be rescheduled on the same monthly docket, generally no more than seven days after the originally scheduled time. When a request to postpone a scheduled hearing under this subsection cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly.

“(d) Where the claimant or representative is hospitalized for a nonelective reason or where the death of the claimant's or representative's parent, spouse, child or other immediate family prevents attendance at the hearing, OWCP will, upon submission of proper documentation, grant a postponement beyond one monthly docket.

“(e) Decisions regarding rescheduling under paragraphs (b) through (d) of this section are within the sole discretion of the hearing representative and are not reviewable.

“(f) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is

⁵ *G.G.*, 58 ECAB 389 (2007).

⁶ *Merton J. Sills*, 39 ECAB 572 (1988).

shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.”⁷

ANALYSIS -- ISSUE 2

By decision dated February 21, 2012, OWCP denied appellant’s claim for an occupational disease. Appellant timely requested an oral hearing. In an April 27, 2012 letter, it notified her that a telephone hearing was scheduled for June 12, 2012 at 2:15 p.m., eastern time. OWCP instructed appellant to telephone a toll-free number and enter a pass code to connect with the hearing representative.⁸ Appellant did not telephone at the appointed time. She did not request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of June 12, 2012. The Board therefore finds that appellant abandoned her request for a hearing.

On appeal appellant alleged that she missed the oral hearing as she did not have a telephone and missed the scheduled time by waiting to use a neighbor’s land line. The Board notes that appellant did not provide notice of her difficulties until August 8, 2012 almost two months after the scheduled date of the hearing. Moreover, the Board is precluded from reviewing new evidence for the first time on appeal. As the August 8, 2012 letter was not before OWCP at the time it issued its July 17, 2012 decision, the Board is precluded from reviewing it on this appeal.⁹ The Board finds that appellant did not provide prompt notice of her difficulties and abandoned her oral hearing.

CONCLUSION

The Board finds that appellant did not provide the necessary medical evidence to establish that she sustained an injury due to her employment duties. The Board further finds that she abandoned her oral hearing.

⁷ 20 C.F.R. § 10.622. With respect to abandonment of hearing requests, OWCP’s procedures provide that the failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a 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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also J.W.*, Docket No. 12-1567 (issued November 8, 2012).

⁸ In the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have been received. *See W.P.*, 59 ECAB 574 (2008).

⁹ *See* 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 17 and February 21, 2012 are affirmed.

Issued: January 23, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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