

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARLAND HARRISON, JR. and DEPARTMENT OF THE NAVY,
PUBLIC WORKS CENTER, Portsmouth, Va.

*Docket No. 96-1936; Submitted on the Record;
Issued May 12, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability during the period May 1988 to May 1991 due to his October 17, 1984 and May 29, 1985 employment injuries; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability during the period May 1988 to May 1991 due to his October 17, 1984 and May 29, 1985 employment injuries.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

In the present case, the Office accepted that appellant sustained employment-related right knee injuries on October 17, 1984 and May 29, 1985 in the form of a contusion and detachment of the lateral meniscus. The Office authorized several surgeries which were performed on appellant's right knee. Appellant stopped work for various periods and was working in a light-duty position when he stopped work in May 1988. Appellant alleged that he was entitled to compensation for total disability during the period May 1988 to May 1991.² By decision dated

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² Appellant returned to a light-duty position at the employing establishment in May 1991.

August 10, 1995, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he had an employment-related recurrence of total disability for the claimed period.³

The Board notes that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability during the period May 1988 to May 1991 due to his October 17, 1984 and May 29, 1985 employment injuries. Appellant submitted an April 2, 1991 form report in which Dr. Leo C. Bowers, an attending Board-certified family practitioner, diagnosed chronic degenerative joint disease of the knees; listed a date of injury as October 1984; checked a "yes" box indicating that the diagnosed condition was due to the reported employment activity; and indicated that appellant was totally disabled from November 21, 1988 to the present. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁴ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Bowers did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. Dr. Bowers did not describe appellant's employment injuries or provide a rationalized medical opinion explaining how they could have caused total disability between mid 1988 and mid 1991.⁵ The record contains other medical reports regarding the treatment of appellant's right knee during the period May 1988 to May 1991, but none of these reports contains an opinion that he was totally disabled during this period due to an employment-related condition.

The Board further finds that the Office properly determined that appellant abandoned his request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides claimants under the Act a right to a hearing if they request a hearing within 30 days of an Office decision.⁶ Section 10.137 of Title 20 of the Code of Federal Regulations pertaining to postponement, withdrawal or abandonment of a hearing request states in relevant part:

"A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in the assessment of costs against such claimant."

³ The Office indicated that appellant's claimed period of disability was November 1988 to May 1991, but the actual period was May 1988 to May 1991.

⁴ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

⁵ Moreover, it should be noted that appellant's degenerative disease has not been accepted as employment related.

⁶ 5 U.S.C. § 8124(b).

* * *

“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. 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.”⁷

In the present case, by letter dated September 8, 1995, appellant requested a hearing before an Office representative in connection with the Office’s August 10, 1995 decision. By notice dated January 17, 1996, the Office advised appellant of the time and place of a hearing scheduled for February 7, 1996. Appellant did not request postponement at least three days prior to the scheduled date of the hearing. Nor did he request within 10 days after the scheduled date of the hearing that another hearing be scheduled. On appeal appellant alleged that he did not receive the January 17, 1996 notice from the Office. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.⁸ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁹ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.¹⁰ The record contains a copy of the January 17, 1996 notice which is addressed to appellant’s address of record and it appears that the notice was duly mailed. It is presumed that appellant received the January 17, 1996 notice in that appellant did not submit sufficient evidence to rebut this presumption.¹¹ Given that he was advised of the date and place of the hearing scheduled for February 7, 1996, appellant’s failure to make the above-described requests, together with his failure to appear at the scheduled hearing, constitutes abandonment of his request for a hearing and the Board finds that the Office properly so determined in its February 21, 1996 decision.

⁷ 20 C.F.R. § 10.137(c).

⁸ *George F. Gidicsin*, 36 ECAB 175, 178 (1984).

⁹ *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

¹⁰ *Larry L. Hill*, 42 ECAB 596, 600 (1991).

¹¹ Appellant’s address of record is 17239 Woodland Drive, Windsor, Virginia 23487.

The decisions of the Office of Workers' Compensation Programs dated February 21, 1996 and August 10, 1995 are affirmed.

Dated, Washington, D.C.
May 12, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member