U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD L. KULPCAVAGE and U.S. POSTAL SERVICE,
POST OFFICE, Reading, Pa.

Docket No. 97-816; Submitted on the Record;
Issued February 3, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has a back, leg or shoulder condition causally related to his accepted August 29, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly found that appellant abandoned his request for a hearing.

In the present case, the Office accepted that appellant sustained a right hip contusion as a result of a motor vehicle accident on August 29, 1994 and authorized continuation of pay from August 30 to September 6, 1994. Appellant returned to work on September 7, 1994. By letter received by the Office on May 19, 1995, appellant argued that his claim should be expanded to include leg, lower back and right shoulder conditions. By decision dated March 20, 1996, the Office found that appellant had not established a leg, shoulder or back condition causally related to his August 29, 1994 employment injury. On April 2, 1996 appellant requested a hearing, which the Office scheduled for November 19, 1996. By decision dated December 11, 1996, the Office found that appellant abandoned his hearing request.

The Board has duly reviewed the case record and concludes that appellant has not met his burden of proof to establish that he has a back, leg or shoulder condition causally related to his accepted August 29, 1994 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including the fact 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]

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[1] 5 U.S.C. §§ 8101-8193.

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

To establish a causal relationship between the condition claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.[3] 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[4]

Appellant has not met his burden of proof because the medical evidence of record does not establish that he has a back, leg or shoulder condition causally related to the accepted employment injury. Appellant's claim form, as well as the history of injury contained on the form reports of record, indicate injuries to the right hip, right and left thigh, upper and lower back and abdomen. However, none of the medical reports of record contain diagnoses relevant to any condition other than hip pain or pain radiating from the hip injury. Following his employment injury, appellant initially received treatment from Dr. Craig L. Reimer, an internist. He, in a form report dated September 2, 1994, diagnosed a contusion of the right hip and found that appellant could resume employment September 7, 1994.

Appellant next received treatment form Dr. Robert Boran, Jr., a Board-certified orthopedic surgeon. In a report dated November 9, 1994, Dr. Boran noted that appellant's chief complaint was of right hip pain and diagnosed soft tissue trauma to the anterior portion of the right thigh due to an injury from his seat belt. In a form report dated December 5, 1994, Dr. Boran listed clinical findings of a full range of motion of the right hip with "mild pains referable to the front part of thigh in the groin." In an office visit note dated December 14, 1994, Dr. Boran noted that appellant's hip condition was unchanged. In an office visit note and accompanying form report dated March 22, 1995, Dr. Boran noted pain in the buttocks area and diagnosed a soft tissue trauma. In an office visit note dated July 31, 1995, Dr. Boran noted that appellant was "making slow but steady progress with relief of the discomfort in the hip area." In an office visit note dated September 20, 1995, Dr. Boran treated appellant for aches in the hip area. In an office visit note dated February 2, 1996, Dr. Boran treated appellant for pain over the right pelvic rim extending down the anterior lateral aspect of the thigh. He diagnosed a "[p]robable cutaneous nerve peripheral nerve injury, local trauma from seat belt" and recommended further testing. Dr. Boran's finding of a possible peripheral nerve injury is couched in speculative terms and thus is of little probative value.[5]

[3] *John M. Tornello*, 35 ECAB 234 (1983).

[4] *James Mack*, 43 ECAB 321 (1991).

[5] *Connie Johns*, 44 ECAB 560 (1993).

As appellant has failed to submit a well-reasoned medical opinion, based on a complete and accurate history, diagnosing a definite back, leg or shoulder condition causally related to his August 29, 1994 employment injury, the Board finds that he has not met his burden of proof.

The Board further finds that appellant abandoned his request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides claimants the 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 a postponement, withdrawal or abandonment of a hearing states in relevant part:

> "A scheduled hearing may be postponed or canceled 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 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 assessment of costs against such claimant."
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> "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 April 2, 1996, appellant requested a hearing before an Office hearing representative regarding the Office's March 29, 1996 decision. By notice dated October 24, 1996, the Office advised appellant of the time and place of the hearing scheduled for November 19, 1996. The record shows that this letter was properly addressed to appellant. Appellant did not request postponement at least three days prior to the scheduled date of the hearing. Neither did he request within 10 days after the scheduled date of the hearing that another hearing be scheduled. Appellant's failure to make such requests, together with his failure to appear at the scheduled hearing, constituted abandonment of his request for a hearing and the Board finds that the Office properly so determined.

Appellant argues on appeal that he did not received the notice of the hearing.

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] The presumption arises when it appears from the record that the notice was properly addressed and duly mailed.

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[6] 5 U.S.C. § 8124(b).

[7] 20 C.F.R. § 10.137(a), (c).

[8] *Mike C. Geffre*, 44 ECAB 942 (1993).

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. The Office's finding of abandonment in this case rests on the strength of this presumption.

Appellant has explained to the Board that he did not in fact receive notice of the hearing. However, the Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision.[9] The Board may, therefore, not consider whether appellant's explanation is sufficient to rebut the presumption of receipt raised by the "mailbox rule." When the Office issued its decision on December 11, 1996, the record contained no explanation for appellant's failure to appear. The Office's decision was, therefore, proper.

The decisions of the Office of Workers' Compensation Programs dated December 11 and March 20, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 3, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[9] 20 C.F.R. § 501.2(c). Appellant may submit such argument and any supporting evidence in a request for review to the Office pursuant to 5 U.S.C. § 8128.