

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. WASHINGTON and DEPARTMENT OF THE ARMY,
WALTER REED ARMY MEDICAL CENTER, Washington, D.C.

*Docket No. 00-1582; Submitted on the Record;
Issued October 19, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained hepatitis C while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly found that appellant abandoned his oral hearing request.

On May 3, 1999 appellant, then a 49-year-old custodial worker, filed an occupational disease claim alleging that his chronic hepatitis C condition was caused by exposure to improperly placed medical waste and numerous needle sticks.¹ He alleged that he first became aware of his disease on January 24, 1995 and related it to his federal employment on July 24, 1998. Effective January 3, 1999, appellant was reassigned to a different duty station because of his medical condition.

On a form dated January 3, 1995, appellant indicated that on that date he cleaned a blood spill. In a request for hazardous duty pay dated June 15, 1994, appellant alleged that when he removed trash on June 9, 1994, biological waste leaked on the hallway floor.

In a statement dated January 31, 1995, the employing establishment denied appellant's hazardous pay request; however, it found that regulated medical waste was improperly placed with normal trash, which appellant emptied each day.

Appellant submitted a July 24, 1998 report in which Dr. James H. Lewis, a Board-certified internist, diagnosed hepatitis C and noted that appellant was an intravenous drug user in the 1970s. Dr. Lewis also noted a history of hepatitis B infection. Dr. Lewis stated: "[A]ppellant works in a proctology lab at [the employing establishment] and also suffered needle

¹ The record contains an occupational disease claim filed February 13, 1995 alleging that appellant contracted hepatitis B caused by exposure to medical waste for at least one year. In an undated statement received by the Office on April 5, 1999, appellant stated that he was unaware he had contracted hepatitis C when he filed the 1995 claim for hepatitis B.

sticks in the early 1990s although the history of [intravenous] drug use in the [1970s] is just as equally likely to be a source of infection.”

Appellant submitted progress notes from an employing establishment physician dated January 2, 1996 noting a needle stick and evidence of a past hepatitis B reaction. In notes dated August 16, 1996, he noted that on August 12, 1996, appellant was disposing a trash bag when it punctured.

By letter dated May 25, 1999, the Office advised appellant that the evidence of record was insufficient to establish his claim and it requested that he submit additional factual and medical evidence within 30 days.

Appellant submitted a narrative statement dated June 21, 1999 in which he discussed previously alleged employment factors and noted his symptoms. He stated that prior to February 1995, he did not experience symptoms.

By decision dated July 30, 1999, the Office denied appellant’s claim on the grounds that the medical evidence of record failed to establish that his condition was causally related to factors of his federal employment. The Office found that appellant’s exposure to hazardous materials did not amount to a compensable employment factor.

By letter dated August 18, 1999, appellant requested an oral hearing.

By letter dated January 5, 2000, the Office advised appellant that an oral hearing before an Office hearing representative was scheduled for February 11, 2000 at 9:30 am.

By decision dated February 23, 2000, the Office found that appellant abandoned the oral hearing scheduled for February 11, 2000.

The Board finds that appellant has not met his burden of proof to establish that his hepatitis C condition was sustained in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her 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.³ Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

In an occupational disease claim, it must be established that a condition was sustained in the performance of duty by submitting 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.⁵

The medical evidence required to establish a causal relationship between the occupational disease or condition and the identified employment factors is, generally, rationalized medical opinion evidence.⁶ The opinion of a 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 relationship between the diagnosed condition and the employment factors identified by the claimant.⁷

In this case, the Office did not dispute appellant's hepatitis C condition; however, it found that the medical evidence of record failed to establish a causal relationship between that condition and the alleged employment factors.

Dr. Lewis, in his July 24, 1998 report, stated that appellant's history of intravenous drug use in the 1970s was equally likely to be a source of infection as his work in a proctology lab and needle stick exposures.

As appellant has failed to submit any rationalized medical opinion evidence relating his claimed condition to factors of this federal employment, he has not met his burden of proof in establishing that he sustained hepatitis C in the performance of duty causally related to factors of his federal employment.

The Board also finds that appellant abandoned his oral hearing request.

Section 10.137 of Title 20 of the Code of Federal Regulations, revised April 1, 1997 previously set forth the criteria for abandonment:

“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 assessment of costs against such claimant.”

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⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

⁷ *Thomas L. Hogan*, 47 ECAB 323, 329 (1996).

“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.”⁸

These regulations, however, were revised on April 1, 1999. Effective January 4, 1999, the regulations now make no provision for abandonment. Section 10.622(b) addresses requests for postponement and provides for a review of the written record when the request to postpone does not meet certain conditions.⁹ Alternatively, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative. The section is silent on the issue of abandonment.

The legal authority governing abandonment of hearings now rests with the Office’s procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

“(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, H&R [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 DO [district office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

“(2) However, in any case where a request for postponement has been received, regardless of failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

“This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”¹⁰

⁸ 20 C.F.R. §§ 10.137(a), 10.137(c) (revised April 1, 1997).

⁹ 20 C.F.R. § 10.622(b) (1999).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

In this case, the Office scheduled an oral hearing at a specific time and place on February 11, 2000. The record shows that the Office mailed an appropriate notice to appellant at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he failed to provide any notification for such failure within 10 days of the scheduled hearing date. As the conditions for abandonment specified in the Office's procedure manual have been met, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

The decisions of the Office of Workers' Compensation Programs dated February 23, 2000 and July 30, 1999 are hereby affirmed.

Dated, Washington, DC
October 19, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member