

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD D. DELACY and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-1928; Submitted on the Record;
Issued April 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issues are: (1) whether appellant met his burden of proof to establish that his left knee condition is causally related to factors of his federal employment; and (2) whether appellant abandoned his request for an oral hearing.

Appellant, then a 41-year-old electronics technician, filed a Form CA-2 claim on August 30, 2000 alleging that an "on-the-job injury from 1991 has recently been aggravated by a change in duties, which started in March of 2000." Appellant did not stop work.

On September 18, 2000 the Office of Workers' Compensation Programs requested additional factual or medical information from appellant. In a letter received by the Office on September 21, 2000 appellant advised that on July 29, 1991 while working as an MPE mechanic he tore his left knee, cartilage (menisci). Appellant stated that he was scheduled for arthroscopic surgery to correct the problem. Appellant elaborated that in March of 2000 "I started a new tour of duty, which required me to perform much more standing, bending and kneeling than I had been subject to as a tour three ET performing on call maintenance. As a tour two ET I performed preventative maintenance on [p]ostal equipment requiring me to spend up to 7½ hours kneeling, bending and standing on cement floors 5 or more days a week."

In a letter dated September 22, 2000, appellant wrote:

"My new duties involved extensive kneeling, bending, pulling, pushing, standing and stooping. This change in the amount of excessive physical movements ... put a strain on my already weakened knee from the previous injury in 1991. I am now required to kneel on a cement floor to gain access to repair, replace, clean and calibrate parts and equipment. I am required to bend for extended periods of time to gain access to repair, replace, clean and calibrate parts and equipment. I am required to push and pull on heavy and tightly restrained objects in order to repair, replace and calibrate them. I am now required to stand for prolonged periods of time in one place while I calibrate, clean and adjust equipment. I am

now required to stoop for extended periods of time in order to repair, replace, clean and calibrate equipment.”

In support of his claim, appellant submitted unsigned medical progress notes dated August 28, 2000 from “First State Orthopedics.” The notes stated:

“[Appellant] did markedly increased kneeling and squatting at work in March or April and he has increased knee symptoms since late July which he feels is related to the repetitive kneeling and squatting he has had to do at work. He also has noticed a palpable Baker’s cyst.

“He also described some numbness in his left foot along the lateral border. He has a history of back injury when he was a marine at the L[3-4] collapsed disc.

“Status post left knee arthroscopy, partial medial meniscectomy at work in 1991. May have secondary degenerative changes with secondary Baker’s cyst formation from this original work injury.... Any treatment to his left knee is directly related to his original work injury of 1991.”

In a decision dated December 15, 2000, the Office denied appellant’s claim finding that “the medical evidence was not sufficient to establish that your condition was caused by the employment factor.”

In a letter dated December 28, 2000, appellant requested a hearing. The hearing was scheduled for May 16, 2001. Appellant was notified of the hearing date but failed to appear or provide any notice either prior to or after the hearing explaining why he missed the hearing. In a decision dated June 12, 2001, appellant was found to have abandoned his request for a hearing.

The Board finds the medical evidence submitted does not establish that appellant’s medical condition was causally related to factors of his federal employment

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.¹

The medical evidence in the record consists of unsigned treatment notes indicating that appellant felt his medical condition, a Baker's cyst, was caused by his employment. The notes also indicate that appellant "may have secondary degenerative changes with secondary Baker's cyst formation from this original work injury.... Any treatment to his left knee is directly related to his original work injury of 1991."

The Board has previously held that unsigned medical notes are of little probative value.² The Board further finds that the evidence submitted lacks medical certainty and rationale to establish that his condition was causally related to factors of his federal employment. In stating that appellant may have secondary degenerative changes the evidence lacks reasonable medical certainty. Moreover, the medical notes offer no opinion regarding the medical effects of appellant's new job duties.

Finally, the Board finds that the Office properly found that appellant abandoned the hearing. A hearing was scheduled for May 16, 2001 and appellant did not attend.

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.³ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁴ 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.⁵ The Office's finding of abandonment in this case rests on the strength of this presumption. The Office's March 23, 2001 notice which advised appellant of the time and place of a hearing scheduled for May 16, 2001, was addressed to the appellant at the 545 Mason Dr., New Castle DE 19720. This was also the address to which the Office's December 15, 2000 decision and other documents clearly received by appellant were mailed and, therefore, it must be presumed to be a proper address for appellant.

¹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

² A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2); *Merton Sills*, 39 ECAB 572 (1988).

³ *George F. Gidicsin*, 36 ECAB 175, 178 (1984).

⁴ *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁵ *Larry L. Hill*, 42 ECAB 596, 600 (1991).

The June 12, 2001 and December 15, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 17, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member