

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD A. SAMALONIS and U.S. POSTAL SERVICE,  
POST OFFICE, Bellmawr, NJ

*Docket No. 01-1626; Submitted on the Record;  
Issued February 12, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS,

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a carpal tunnel condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly found that appellant had abandoned his request for a hearing before an Office hearing representative.

Appellant, a 54-year-old mailhandler, filed a claim for benefits on July 24, 2000 alleging that he developed a bilateral carpal tunnel condition causally related to factors of his employment. He did not submit any medical evidence in support of his claim.

By letter dated August 8, 2000, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that he submit the additional evidence within 30 days. Appellant did not submit any evidence.

By decision dated October 30, 2000, the Office denied appellant's claim on the grounds that the claimed medical condition was not causally related to factors or incidents of employment.

By letter dated November 15, 2000, appellant requested an oral hearing. He did not submit any medical evidence with this request.

By letter dated March 19, 2001, the Office informed appellant that a hearing would be held on April 24, 2001.

In a May 21, 2001 decision, the Office found appellant abandoned his request for a hearing, as he failed to appear at the time and place set for the hearing and did not show good cause for his failure to appear.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a bilateral carpal tunnel condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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 causal relationship is usually rationalized medical 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.<sup>4</sup>

An award of compensation may not be based on surmise, conjecture or speculation. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>5</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>6</sup> Causal relationship must be established by rationalized medical opinion evidence.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>6</sup> *Id.*

In this case, although appellant claimed to have sustained a work-related bilateral carpal tunnel condition, he has not submitted a rationalized, probative medical opinion sufficient to demonstrate that his claimed condition was causally related to factors of his federal employment. The Office advised appellant of the type of evidence required to establish his claim; however, he failed to submit such evidence. Accordingly, as appellant failed to submit any probative medical evidence establishing that his claimed bilateral carpal tunnel condition was causally related to his employment, the Office properly denied appellant's claim for compensation.

The Board also finds that appellant abandoned his request for a hearing before an Office hearing representative.

In a decision dated May 21, 2001, the Office found that appellant abandoned his November 15, 2000 request for an oral hearing before an Office hearing representative. The Office noted that the hearing was scheduled for April 24, 2001, that appellant received written notification of the hearing 30 days in advance, that appellant failed to appear and that the record contained no evidence that appellant contacted the Office to explain his failure to appear.

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.

“A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for hearing that 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.<sup>7</sup>

These regulations, however, were again revised 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.<sup>8</sup> 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:

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<sup>7</sup> 20 C.F.R. §§ 10.137(a), 10.137(c) (revised as of April 1, 1997).

<sup>8</sup> 20 C.F.R. § 10.622(b) (1999).

“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:

[T]he 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 precouplement 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 any 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.

“(3) 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.”<sup>9</sup>

In this case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on April 24, 2001. The record shows that the Office mailed 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 date of the hearing. As this meets the conditions for abandonment specified in the Office’s procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999).

The decisions of the Office of Workers' Compensation Programs dated May 21, 2001 and October 30, 2000 are hereby affirmed.

Dated, Washington, DC  
February 12, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member