U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNA M. ERCOLI and U.S. POSTAL SERVICE,
POST OFFICE, Anchorage, AK

Docket No. 01-1971; Submitted on the Record;
Issued June 21, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a respiratory or allergic condition in the performance of duty on May 16, 2000; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned her request for hearing before an Office hearing representative.

On August 27, 2000 appellant, then a 64-year-old mail clerk, filed a claim alleging that on May 16, 2000 she sustained a respiratory or allergic condition when she was exposed to droppings and dust from a box of chicks that was being mailed. Appellant indicated that she experienced a burning sensation in her throat and eyes and that she had an inflamed and blistered throat. By decision dated November 7, 2000, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a respiratory or allergic condition due to the accepted workplace exposure on May 16, 2000. Appellant requested a hearing before an Office hearing representative which was scheduled for June 28, 2001. By decision dated July 9, 2001, the Office determined that appellant abandoned her request for a hearing before an Office hearing representative.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of 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.[2] These are the essential

[1] 5 U.S.C. §§ 8101-8193.

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

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[6]

In support of her claim that she sustained a respiratory or allergic condition at work on May 16, 2000, appellant submitted a May 16, 2000 work status form which was completed by a physician with an illegible signature. In the comments section of the form, the physician stated, "sinusitis -- allergic reaction to chickens."[7] However, the report is of limited probative value on the relevant issue of the present case because the physician did not provide a clear opinion that appellant sustained a medical condition due to her exposure in the workplace on May 16, 2000.[8] The physician did not provide a detailed discussion of the employment factors implicated by appellant or the findings of her examination. The physician also did not provide any discussion of appellant's factual and medical history.[9] The record does not contain a rationalized medical opinion based on a complete and factual medical history, which relates appellant's claimed condition to the accepted employment factors. Appellant was provided with an opportunity to provide additional medical evidence, but she did not do so within the allotted time period.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a respiratory or allergic condition in the performance of duty on May 16, 2000.

The Board further finds that the Office properly determined that appellant abandoned her request for a hearing before an Office hearing representative.

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[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[5] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

[7] The physician indicated that appellant could return to work on May 18, 2000.

[8] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

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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> "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."[10]

These regulations, however, were again revised as of 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.[11] 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.
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> "Under these circumstances, 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 [d]istrict Office. In cases involving prerecoupment hearings, [hearings and review] will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [district Office].

[10] 20 C.F.R. §§ 10.137(a), 10.137(c) (revised as of April 1, 1997).

[11] 20 C.F.R. § 10.622(b) (1999).

"(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [hearings and review] 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 [hearings and review] 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."[12]

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on June 28, 2001. The record shows that the Office mailed appropriate notice to the claimant at her last known address. The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she 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 her request for an oral hearing before an Office hearing representative.[13]

The July 9, 2001 and November 7, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 21, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

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

[13] *See also Claudia J. Whitten*, 52 ECAB ___ (Docket No. 99-2128; issued August 22, 2001).