

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILTON B. LINDSEY and U.S. POSTAL SERVICE, MARINA
PROCESSING & DISTRIBUTION CENTER, Inglewood, CA

*Docket No. 02-908; Submitted on the Record;
Issued September 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that he sustained an injury causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

On March 2, 2001 appellant, then a 43-year-old mailhandler equipment operator,¹ filed an occupational disease claim assigned number 13-2023782 alleging that on February 8, 2001 he first realized that his chronic pain in his feet (heels), back pain and numbness in his legs and feet was caused or aggravated by his employment.

By letter dated March 29, 2001, the Office advised appellant that the evidence he submitted was insufficient to establish his claim. The Office requested that appellant submit additional factual and medical evidence supportive of his claim. In response, appellant submitted factual and medical evidence.

By decision dated May 24, 2001, the Office found the evidence of record insufficient to establish that appellant sustained an injury causally related to factors of his federal employment. In a June 8, 2001 letter, appellant requested an oral hearing before an Office representative.

In a January 22, 2002 decision, the Office found that appellant abandoned his June 8, 2001 request for an oral hearing before an Office hearing representative.

The Board has reviewed the case record in this appeal and finds that appellant failed to establish that he sustained an injury causally related to factors of his federal employment.

¹ On August 7, 1998 appellant accepted the position of modified mailhandler equipment operator offered by the employing establishment.

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, generally, 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.²

Appellant has failed to submit sufficient rationalized medical evidence establishing that he sustained an injury caused or aggravated by factors of his federal employment. A March 16, 2000 report from Dr. Samuel S. Galley, a family practitioner, revealed a diagnosis of diabetic nephropathy, insulin dependent diabetes mellitus and profound blurred vision secondary to the above diagnoses. Dr. Galley stated that appellant was unable to engage in any normal gainful activities including work from December 17, 1999 through April 30, 2000. Dr. Galley failed to address whether appellant's conditions and disability for work were causally related to factors of his employment.

A March 30, 2001 note from Dr. Liza Alexander, a Board-certified podiatrist, revealed that she treated appellant on that date for his plantar fasciitis on both feet. Dr. Alexander's note is insufficient to establish appellant's burden because she failed to address whether appellant's plantar fasciitis was causally related to factors of his employment.

Similarly, Dr. Alexander's April 13, 2001 prescriptions ordering x-rays of appellant's heels and medication failed to address whether appellant had a condition causally related to factors of his employment.

The March 19, 2001 authorization form of Dr. Yvonne Tyson, a Board-certified family practitioner, indicated a diagnosis of plantar tendinitis and the referral of appellant to Dr. Alexander, but it did not address whether appellant's condition was caused by factors of his employment.

In an April 17, 2001 report, Dr. William H. Dillin, a Board-certified orthopedic surgeon, provided a history of appellant's February 8, 2001 injury, medical treatment and social background. Dr. Dillin also provided a description of appellant's job as a mailhandler and complaints. He noted his findings on physical examination and diagnosed lumbar myofascial syndrome. Dr. Dillin ordered a magnetic resonance imaging scan to determine the cause of

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant's radicular complaints. He concluded that appellant was restricted to semi-sedentary deskwork only. Dr. Dillin failed to address whether appellant's lumbar myofascial syndrome was caused by factors of his employment.

As appellant has failed to submit rationalized medical evidence establishing that he sustained an injury caused or aggravated by factors of his employment, the Board finds that he has failed to meet his burden of proof.

The Board further finds that the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

In finding that appellant abandoned his June 8, 2001 request for an oral hearing before an Office hearing representative, the Office noted that the hearing was scheduled for January 10, 2002, 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.

The legal authority governing abandonment of hearings 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 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.

"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."³

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999).

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on January 10, 2002. The record shows that the Office mailed appropriate notice to the claimant 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.

The January 22, 2002 and May 24, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 5, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member