U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL DELIFUS and DEPARTMENT OF THE NAVY, TRIDENT REFIT FACILITY, Kings Bay, GA

Docket No. 03-413; Submitted on the Record;
Issued March 24, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, DAVID S. GERSON

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury causally related to 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 December 30, 2001 appellant, then a 49-year-old material handler supervisor, filed a traumatic injury claim asserting that on November 27, 2001 his blood pressure escalated to 181/117 from stress related to employment factors. Appellant did not stop working.

In a letter dated December 11, 2001, the Office advised appellant that additional information was needed in order to establish the claim. The Office requested a history of injury as given to his physician, dates of examination and treatment, a detailed description of findings, x-rays and laboratory tests, a diagnosis and a physician's opinion supported by medical rationale as to how the reported work incident caused or aggravated a claimed injury. The Office afforded appellant 30 days, with which to submit the requested documentation.

In response, appellant submitted treatment notes dated November 21, 2001, evidencing emergency medical care, an insurance verification form and an electrocardiogram report dated November 21, 2001, which showed abnormal findings. In a questionnaire report, it was noted that appellant presented to the emergency room sweating, with dizziness and nausea and indescribable pain around the eyes and head. The questionnaire also indicated that appellant was completely examined by a physician at that time. The Office did not receive any further evidence from appellant within the allotted time frame.

By decision dated January 23, 2002, the Office found that the evidence supported that appellant actually experienced the claimed event, however, it denied his claim on the grounds that the evidence of record failed to establish that a condition had been diagnosed in connection with the event.

In a letter dated February 1, 2002, appellant requested an oral hearing. He submitted additional evidence with his request and some evidence already of record. Appellant submitted additional pages to the questionnaire report previously of record dated November 27, 2001, which indicated that appellant was examined by a physician, diagnosed with hypertension and discharged that day.

The oral hearing was scheduled by the Office's Branch of Hearings and Review for July 17, 2002, however, it was subsequently postponed. The hearing was rescheduled for October 31, 2002. Appellant, however, failed to appear for the proceeding.

By decision dated November 18, 2002, the Office determined that appellant abandoned his request for a hearing.

On appeal appellant contests the November 18, 2002 decision of the Office asserting that he was notified that his oral hearing was cancelled. Appellant contends that several months passed without a word about a new hearing date and after he contacted his regional office, he was referred to Washington. Appellant further contends that his physician has prescribed him hypertension medication indefinitely and that he never required blood pressure medication until the November 27, 2001 work incident.

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.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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.[1] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

The Office, in determining whether an employee actually sustained an injury in the performance of duty, first analyzes whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered, in conjunction with one another. In this case, the Office accepted that the first component, the employment incident, occurred as alleged.[3] The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the

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

[2] *Id*.

[3] *See Mary J. Briggs*, 37 ECAB 578 (1986).

employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[7]

There is no dispute that appellant established that on November 27, 2001 he was on the premises of the employing establishment during working hours and was performing the duties of his position when his blood pressure escalated. Appellant failed, however, to establish that a causal relationship existed between the incident and the claimed hypertension. The Office advised appellant of the type of information needed in order to establish causal relationship in its letter dated December 11, 2001, however, the requisite evidence was not submitted within the allotted time frame. Because appellant did not submit a sound and medically rationalized opinion from a physician, which was based on a complete factual and medical background of his history, the Board will affirm the denial of appellant's claim for compensation.

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 February 1, 2002 request for an oral hearing before an Office hearing representative, the Office noted that the hearing was scheduled for October 31, 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 [h]earing [r]equests.

"(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.

[4] *See* 5 U.S.C. § 8101(2); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

> "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.
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> "(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.
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> "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."[8]

In the present case, the Office initially scheduled an oral hearing before an Office hearing representative on July 17, 2002; however, on or about June 25, 2002, the scheduled hearing was cancelled. On appeal appellant acknowledges that the regional Office cancelled the first oral hearing proceeding and that he did not request postponement. Appellant asserts, however, that he never received notice of the rescheduled hearing date, time or place. The record reflects that the Office advised appellant on or about June 25, 2002 that the July 17, 2002, proceeding had been postponed and by letter dated September 26, 2002, advised that the oral hearing had been rescheduled at a specific time and place on October 31, 2002. The Board notes that notice was given more than 30 days before the scheduled hearing date and the record shows that the Office mailed appropriate notice to the claimant at his last known address. It is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by the individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.[9]

The record establishes that appellant did not request postponement of the hearing date, he failed to appear at the scheduled hearing and 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.

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

[9] *Newton D. Lashmett*, 45 ECAB 181 (1993); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

The November 18 and January 23, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 24, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member