United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 06-1097**
	)	**Issued: August 3, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Nashville, TN, Employer	)	

Appearances:
A.F., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 2, 2005 merit decision denying her claim for a May 25, 2005 injury and the Office's March 17, 2006 nonmerit decision finding that she abandoned her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a back injury in the performance of duty on May 25, 2005; and (2) whether the Office properly determined that she abandoned her request for a hearing.

FACTUAL HISTORY

On September 15, 2005 appellant, then a 51-year-old postal clerk, filed a traumatic injury claim alleging that she sustained a back injury on May 25, 2005. Regarding the cause of her injury, appellant stated, "I strained my back while lifting bundles of flats from a hamper on the [employing establishment] workroom floor. I have continued to experience dull pain in my mid

lower back." Two coworkers indicated on the claim form that they heard appellant tell Monty Hyder on May 25, 2005 that she strained her back and that she "asked for it to be documented." Appellant did not stop work. In an accompanying statement, she stated that the pain she experienced on May 25, 2005 had not gone away and that she now felt that she needed to have medical attention.

By letter dated September 29, 2005, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted the findings of September 27, 2005 x-ray testing which revealed that she had degenerative disc disease at L3-4 and L4-5, with some minor concomitant arthritic change in the posterior elements but no fractures or destructive bone processes. She also submitted an October 4, 2005 form report in which Dr. George Mathai, an attending Board-certified internist, stated that appellant reported on September 26, 2005 that she strained her mid to lower back on May 25, 2005 when she lifted bundles of flats out of a hamper. Dr. Mathai diagnosed "low back strain" due to the reported injury and recommended that appellant not lift more than 20 pounds.

By decision dated November 2, 2005, the Office denied appellant's claim on the grounds that she did not establish the occurrence of the claimed employment incident at the time, place and in the manner alleged.[1]

Appellant requested a hearing before an Office hearing representative which was scheduled to be held in Nashville at 10:00 a.m. on March 3, 2006. She did not appear at the hearing or contact the Office either prior to or subsequent to the scheduled hearing to explain her failure to appear.

By decision dated March 17, 2006, the Office determined that appellant abandoned her request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4] Establishing that a federal employee has sustained

[1] Moreover, the Office indicated that appellant did not submit medical evidence relating a specific condition to the claimed employment factors.

[2] 5 U.S.C. §§ 8101-8193.

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

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

a traumatic injury in the performance of duty involves two components. 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.[5] Second, the employee must submit evidence, in the form of medical evidence to establish that the employment incident caused a personal injury.[6] 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.[7]

An employee who claims benefits under the Act has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[8] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[9] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[10] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[11] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained a back injury in the performance of duty on May 25, 2005. The Board finds that she established the existence of an employment incident on May 25, 2005 but did not establish that she sustained an injury due to that incident.

The Board finds that there are no such inconsistencies in the evidence as to cast serious doubt upon the validity of appellant's claim that she experienced an employment incident on May 25, 2005. She consistently claimed that she sustained a back injury on May 25, 2005 when

[5] *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).

[6] *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).

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

[8] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[9] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[10] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[12] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

she lifted bundles of flats from a hamper. It also appears that appellant promptly reported the claimed injury in that two coworkers noted that she told a supervisor on May 25, 2005 that she strained her back and that she "asked for it to be documented." Although she continued to work and delayed seeking treatment for several months, appellant explained that she only had a dull pain in her back and did not initially feel that medical care was necessary. Therefore, she established an employment incident in the form of lifting flats out of a hamper on May 25, 2005.

The Board further finds that appellant did not submit sufficient medical evidence to establish that she sustained a back injury due to the May 25, 2005 employment incident. She submitted an October 4, 2005 form report in which Dr. Mathai, an attending Board-certified internist, stated that appellant reported on September 26, 2005 that she strained her mid to lower back on May 25, 2005 when she lifted bundles of flats out of a hamper. He diagnosed "low back strain" due to the reported injury and recommended that appellant not lift more than 20 pounds. This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Mathai did not provide adequate medical rationale in support of his apparent conclusion on causal relationship.[13] He did not explain the May 25, 2005 employment incident in any detail or describe the medical process through which it could have caused the claimed injury. For example, Dr. Mathai did not indicate how much weight appellant lifted on May 25, 2005 or the amount of time she spent lifting flats out of a hamper. Such medical rationale is especially necessary in the present case as the medical evidence reveals that she had preexisting degenerative disc disease at multiple levels of the back.

LEGAL PRECEDENT -- ISSUE 2

The 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, 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 district Office. In cases involving prerecoupment hearings, the Branch of Hearings Review will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the district Office.

"(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, the Branch of Hearings and

[13] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980), (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

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 the Branch of 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."[14]

ANALYSIS -- ISSUE 2

The Office scheduled an oral hearing before an Office hearing representative at a specific time and place on March 3, 2006. The record shows that the Office mailed appropriate notice to appellant at her last known address. The record also supports that she did not request postponement, that she failed to appear at the scheduled hearing and that appellant 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.[15]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back injury in the performance of duty on May 25, 2005. The Board further finds that the Office properly determined that appellant abandoned her request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 17, 2006 and November 2, 2005 decisions are affirmed.

Issued: August 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[15] *See also Claudia J. Whitten*, 52 ECAB 483, 485 (2001).