United States Department of Labor
Employees' Compensation Appeals Board

E.E., Appellant	)	
and	)	**Docket No. 06-1173**
	)	**Issued: August 17, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lansing, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 24, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated October 27, 2005, denying her claim for a left foot injury and March 28, 2006, finding that she abandoned her request for a hearing. Pursuant to C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a left foot injury on September 7, 2005 in the performance of duty; and (2) whether she abandoned her request for a hearing.

FACTUAL HISTORY

On September 12, 2005 appellant, then a 25-year-old mail carrier, filed a traumatic injury claim alleging that on September 7, 2005 she sustained a left foot sprain when she was "walking on [T]orrence [Avenue]." In a September 27, 2005 statement, appellant alleged that on September 7, 2005 "I was walking on Glen Oak Street I guess when I was walking across the lawn. They have open pockets in the grass so somehow I must have stepped in one of those pockets and twisted my left foot."

In a September 9, 2005 emergency room report received by the Office on October 6, 2005, Dr. Mauricio A. Consalter, a Board-certified internist, diagnosed a left foot sprain. The history given by appellant was a gradual onset of left foot pain two days previously. Dr. Consalter indicated that the mechanism of injury was "body motion, overuse."

By decision dated October 27, 2005, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the September 7, 2005 incident occurred at the time, place and in the manner alleged.

On November 3, 2005 appellant requested a telephone hearing.

By letter dated February 8, 2006, an Office hearing representative advised appellant that a telephone hearing was scheduled for March 14, 2006 at 1:00 p.m. He provided a toll-free number and instructed appellant to call the number a few minutes before the scheduled 1:00 p.m. telephone hearing and enter the provided pass code. The hearing representative indicated that appellant would then be connected, *via* telephone, to him and a court reporter who would prepare a transcript of the telephone hearing.

By decision dated March 28, 2006, the Office hearing representative found that appellant had abandoned her request for a hearing as she did not contact him at the time scheduled for the March 14, 2006 telephone hearing. He noted that she had received written notification of the hearing 30 days in advance and did not contact the Office prior or subsequent to the hearing date to explain her failure to participate in the scheduled telephone hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[2]

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.[3] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4] An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Shirley A. Temple*, 48 ECAB 404 (1997).

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.[5]

ANALYSIS -- ISSUE 1

The Board finds that the evidence is insufficient to establish that appellant sustained a left foot sprain at the time, place and in the manner alleged on September 7, 2005.

In her September 12, 2005 traumatic injury claim form, appellant alleged that she sustained a left foot sprain when she was "walking on [T]orrence [Avenue]." In a September 27, 2005 statement, she stated that on September 7, 2005 "I was walking on Glen Oak Street I guess when I was walking across the lawn. They have open pockets in the grass so somehow I must have stepped in one of those pockets and twisted my left foot." The history that appellant provided to Dr. Consalter on September 9, 2005 was that she experienced a gradual onset of left foot pain on September 7, 2005 due to overuse of the foot. The Board finds that there are several inconsistencies in appellant's claim. She first alleged that the injury occurred when she was walking on Torrence Avenue but later indicated that it occurred on Glen Oak Street. Appellant indicated that she "guess[ed]" that "somehow" she twisted her foot when she stepped into a pocket or depression in a lawn. However, she told Dr. Consalter that she had a gradual onset of left foot pain on September 7, 2005 due to overuse of her foot. These inconsistencies as to the time, place and manner that the claimed left foot injury occurred cast serious doubt on appellant's claim. Consequently, she failed to establish that she sustained a left foot sprain on September 7, 2005 in the performance of duty.

As the facts of this case do not establish that the claimed incident on September 7, 2005 occurred at the time, place and in the manner alleged by appellant, it is not necessary to consider the medical evidence.

LEGAL PRECEDENT -- ISSUE 2

With respect to abandonment of hearing requests, Chapter 2.1601.6(e) of the Office's procedure manual provides in relevant part:

> "(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

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 4.

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, [the 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]….

"(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 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."[6]

ANALYSIS -- ISSUE 2

In finding that appellant abandoned her November 3, 2005 request for a hearing, the Office noted that a telephone hearing had been scheduled for March 14, 2006 at 1:00 p.m. The record shows that the Office mailed appellant appropriate notice of the hearing to her last known address. She received written notification of the hearing 30 days in advance but failed to telephone the hearing representative as instructed. The record contains no evidence that appellant contacted the Office to reschedule the hearing or explain her failure to participate in the scheduled telephone hearing.

The Board finds that the record contains no evidence that appellant requested postponement of the hearing. She failed to participate in the scheduled hearing and did not provide any notification for such failure within 10 days of the scheduled hearing. As the circumstances of this case meet the criteria for abandonment as provided in Chapter 2.1601.6(e) of the Office's procedure manual, the Board finds that appellant abandoned her request for an oral hearing.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a left foot sprain on September 7, 2005 in the performance of duty. The Board further finds that the Office properly determined that she abandoned her request for an oral hearing.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also Claudia J. Whitten*, 52 ECAB 483 (2001); 20 C.F.R. § 10.622.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 28, 2006 and October 27, 2005 are affirmed.

Issued: August 17, 2006
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board