

mail, was diagnosed with a lumbar strain, but that the pain had “gotten worse.” The record contains medical reports by Dr. Thomas T. Haider, an orthopedic surgeon, from 1998. In a report dated August 18, 1998, Dr. Haider indicated that appellant had degenerative disc and facet disease at L5-S1 caused by continuous trauma at her work.

In a note dated May 10, 2004, a nurse indicated that appellant had a muscle strain as a result of a skateboarding incident the night before, was off work with a tentative return to work scheduled for May 12, 2004.

In a note dated July 2, 2004, the employing establishment stated that appellant recently had not been able to work full duty due to a skateboarding accident that happened at home. By letter dated July 13, 2004, the Office requested that appellant submit further information. Appellant did not file a timely response.

By decision dated August 16, 2004, the Office denied appellant’s claim, finding that she failed to establish that she sustained an injury related to her federal employment.

By letter dated September 13, 2004, appellant, through her representative, requested an oral hearing.

By letter dated May 25, 2005, the Office informed appellant, by letter sent to her address of record, that her hearing would take place on June 29, 2005 and provided the location and address. The Office also sent a copy of this letter to appellant’s attorney. However, appellant’s attorney notified appellant by letter dated May 19, 2005 that he was withdrawing from the case for nonpayment of fees. The attorney advised the Office of same by letter dated May 24, 2005 and requested approval of an attorney fee. The Office received the attorney’s letter on May 27, 2005.

By decision dated July 18, 2005, the Office determined that appellant had abandoned her request for a hearing. The Office found that appellant received written notification of the hearing but failed to appear. The Office noted that there was no indication that appellant contacted the Office either prior or subsequent to the hearing explaining her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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 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 *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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.

ANALYSIS -- ISSUE 1

There is no evidence to support appellant's June 29, 2004 claim that she sustained injury to her legs, low back, buttocks and groin as a result of her federal employment. Appellant submitted no detailed description of the factors of employment to which she attributed her injury, other than a brief statement that she previously injured her back while delivering mail in 1995. Furthermore, there is evidence in the record that she was not injured at work but in a skateboarding accident at home. Appellant did not file a timely response to the Office's request for further information. Accordingly, the Board finds that she has failed to establish an injury due to her employment duties and has failed to establish her claim. Appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of her federal employment and the Office properly denied her claim.⁴

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 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 claimant has abandoned his or her request for a hearing and return the case to the [district Office]....”

³ *Victor D. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

ANALYSIS -- ISSUE 2

In finding that appellant abandoned her request for a hearing, the Office noted that a hearing had been scheduled for June 29, 2005 for which it provided the location and address. Appellant received written notification of the hearing 30 days in advance but failed to appear for the hearing.

The Board notes that the record contains no evidence that appellant requested postponement of the hearing. She failed to appear at the scheduled hearing and did not provide any notification for such failure within 10 days of the scheduled hearing. As this meets the criteria for abandonment as specified in Chapter 2.1601.6(3) of the Office's procedure manual, the Board finds that appellant abandoned her request for an oral hearing before an Office hearing representative.⁵

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty, as alleged. The Board further finds that the Office properly determined that appellant abandoned her request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 18, 2005 and August 16, 2004 are affirmed.

Issued: July 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁵ Following the issuance of the Office's July 18, 2005 decision, appellant submitted additional evidence and advanced arguments which were not previously considered by the Office. However, the Board may not consider such evidence or arguments for the first time on appeal. In as much as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c).