United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 08-1603**
	)	**Issued: December 5, 2008**
DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, Browning, MT, Employer	)	

Appearances:
Norman R. McNulty, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' nonmerit decision dated February 19, 2008 and a September 19, 2007 decision denying the merits of the claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on July 28, 2006; and (2) whether the Branch of Hearings and Review properly found that appellant abandoned his request for a hearing.

FACTUAL HISTORY

On June 29, 2007 appellant, a 52-year-old police officer for the Blackfeet Reservation filed a CA-1 form, traumatic injury claim and claim for continuation of pay/compensation,

alleging that, on July 28, 2006, in performance of his federal employment, he suffered an injury in the form of heat stroke, profuse sweating, headache, vomiting, fatigue, muscle cramps and chills. Evidence submitted to substantiate this claim consisted of a police phone/radio log and medical reports. The Blackfeet Police log indicated that appellant began his shift on the day in question at 2:00 p.m., that he notified the dispatcher that he was "out at the shelter" at 4:28 p.m., and that he was "at the ER" at 4:39 p.m. Records from the Blackfeet Community Hospital included a nursing assessment which indicated that appellant was admitted to the hospital on July 28, 2006 after complaining of "feeling crummy" with slight nausea and diarrhea. The discharge summary dated July 30, 2006 indicated that appellant was discharged following treatment for dehydration and uncontrolled diabetes.[1]

By letter dated August 8, 2007, the Office advised appellant that the evidence submitted was insufficient to support his claim as he had not described a work incident which caused his claimed injury of heat stroke. Appellant was also advised that the medical reports he had submitted did not discuss any work-related incidents causing an injury. He was advised that the record would be held open for 30 days for submission of further evidence.

Responding to the Office's letter, appellant submitted a letter dated June 19, 2007 from Dr. Dale M. Peterson, a neurologist with the Billings Clinic, pertaining to his current treatment.

By decision dated September 19, 2007, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that appellant had sustained an injury as defined by the Federal Employees' Compensation Act.

On October 2, 2007 appellant requested an oral hearing before the Branch of Hearings and Review. The Office granted appellant's request and notified appellant on December 18, 2007 that a telephonic hearing date had been scheduled for January 28, 2008. Appellant failed to appear at the telephonic hearing.

By decision dated February 19, 2008, the Branch of Hearings and Review found that appellant failed to appear at the scheduled telephonic hearing. The hearing representative found that he had not contacted the Office prior to or subsequent to the scheduled hearing to explain his failure to appear. Therefore, because of his unexplained failure to appear at the scheduled hearing, the Branch of Hearings and Review deemed appellant to have abandoned his request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act has the burden of establishing the essential elements of their claim including: the individual is an employee of the United States within the meaning of the Act; the claim was filed within the applicable time limitation of the Act; an injury was sustained in the performance of duty as alleged; and, that any disability and/or specific

[1] The hospital records were signed by a physician, whose signature is illegible, and by a registered nurse.

condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim.[2]

When an employee claims that he sustained a traumatic injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.[3] He must also establish with rationalized medical evidence that such event, incident or exposure caused an injury.[4]

ANALYSIS -- ISSUE 1

In the present case, appellant alleged that he sustained heat stroke at work on July 28, 2006. The Office denied appellant's claim on the grounds that he had not established that he sustained a work-related traumatic injury. While the record establishes that appellant was on duty as a police officer on July 28, 2006, that he began his shift at 2:00 p.m. and that he went to the Blackfeet Hospital emergency room at 4:39 p.m. with a complaint of "feeling crummy," he did not provide the necessary description of his work activities on the day in question to *prima facie* establish that the incident or exposure occurred as alleged. Appellant did not describe for the Office his work activities during the shift, the temperatures he was exposed to, or any explanation of how he would have sustained a heat stroke during his work shift.

Appellant submitted records from Blackfeet Hospital; this evidence provides a discharge diagnosis of dehydration and uncontrolled diabetes but does not address any specific history. Furthermore these medical records do not describe, with detailed rationale, the relationship between the alleged dehydration and an employment-related incident.[5] These records therefore do not establish that appellant sustained an injury, as alleged on July 28, 2006.

Additionally, appellant submitted a letter dated June 19, 2007 from Dr. Dale M. Peterson. This letter diagnoses appellant, a year following the alleged injury, with anxiety and visual field loss attributable to a small stroke, not heat stroke, and therefore bears no rational relationship to appellant's claim. Accordingly, the Board finds that appellant has not established a *prima facie* claim of traumatic injury in the performance of duty on June 28, 2006.

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[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] The Office's regulations define traumatic injury at 20 C.F.R. § 10.5(ee) as "… a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected."

[4] *See E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007); *Arthur C. Hamer*, 1 ECAB 62 (1947).

[5] Health care providers, such as nurses**,** are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinion. 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.[6] Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.[7] The Office has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.[8]

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, 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].

"(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.[9]

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[6] 20 C.F.R. § 10.616(a).

[7] 20 C.F.R. § 10.617(b). Office procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

[8] *See Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

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

ANALYSIS

The Office issued a decision on September 19, 2007 denying the claim. Appellant requested a hearing before an Office hearing representative regarding this matter on October 2, 2007, and it was scheduled for January 28, 2008.

The record shows that the Office mailed appropriate notice to appellant at his last known address. Furthermore, the record shows: appellant did not request postponement; 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 procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury on July 28, 2006 and that the Branch of Hearings and Review properly concluded that appellant abandoned his request for a telephonic oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2008 and September 19, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board