United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 07-1992**
	)	**Issued: January 25, 2008**
U.S. POSTAL SERVICE, MEMPHIS PROCESSING & DISTRIBUTION CENTER, Memphis, TN, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2007 appellant filed an appeal of a February 22, 2007 decision of the Office of Workers' Compensation Programs denying her occupational disease claim and a June 21, 2007 decision finding that she abandoned her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant established that she sustained a back condition in the performance of duty; and (2) whether the Office properly found that she abandoned her request for a hearing.

FACTUAL HISTORY

On December 30, 2006 appellant, then a 53-year-old mail processing clerk, filed an occupational disease claim (Form CA-2), asserting that she sustained a back injury due to

repetitive lifting at work beginning in October 2006 when she changed jobs.[1] She stopped work on December 6, 2006 and returned to light-duty work on January 3, 2007.

In reports dated December 27, 2006 to January 3, 2007, Dr. Perry C. Rothrock, an attending Board-certified family practitioner, diagnosed chronic low back pain secondary to repeated lifting at work following an October 2006 job change. He noted unspecified muscle spasms and administered injections. Dr. Rothrock related appellant's contention that her symptoms were also related to a July 1999 occupational lifting injury. He recommended that appellant be assigned light duty.

In a January 8, 2007 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. It emphasized the need for a rationalized report from her attending physician explaining how and why the identified work factors would cause the claimed back condition. The Office noted that pain was considered a symptom and not a compensable diagnosis.

In reports dated from August 9 to September 9, 1999, Dr. Mark S. Harriman, an attending orthopedic surgeon, related appellant's account of back pain after lifting a tray of mail on July 1, 1999. He diagnosed lumbar soreness and discharged appellant from treatment on September 11, 1999. Appellant presented again in June 2000 complaining of lumbar pain. Dr. Harriman prescribed physical therapy. He then released her from treatment as her condition had resolved. Dr. Harriman approved an orthopedic chair for appellant in October 2002.

By decision dated February 22, 2007, the Office denied appellant's claim on the grounds that causal relationship was not established. It accepted that appellant's job required repetitive lifting. The Office found, however, that appellant submitted insufficient rationalized medical evidence explaining how and why repetitive lifting caused a back condition and disability as of December 6, 2006.

In a letter postmarked March 6, 2007, appellant requested an oral hearing. In a March 13, 2007 letter, the Office advised her of its procedures regarding oral hearings. It noted that, if a claimant failed "to appear for the hearing or within 10 days of the scheduled hearing to provide documentation of such failure to attend, the hearing request will be deemed abandoned."

By notice dated May 1, 2007, the Office advised appellant that a telephonic hearing had been scheduled in her case on June 11, 2007 at 11:00 a.m. It provided the telephone number of the hearing representative and a pass code. The record demonstrates that appellant did not call in on June 11, 2007. The record contains no evidence that she contacted the Office within 10 days of June 11, 2007 to explain her failure to contact the hearing representative.

By decision dated June 21, 2007, the Office found that appellant abandoned her request for a hearing. It found that she did not call in to the scheduled June 11, 2007 telephonic

[1] In a January 4, 2007 e-mail message, the employing establishment contended that appellant filed her claim to avoid an assignment to the automation section.

conference and did not contact the Office within 10 days before or after the hearing to explain this failure.[2]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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; that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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) 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. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that she developed a back condition due to repetitive lifting at work and was disabled as of December 6, 2006. The Office accepted that she performed such duties,

[2] Appellant submitted new evidence accompanying her request for appeal. The Board may not consider new evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Solomon Polen*, 51 ECAB 341 (2000).

but denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that these work factors caused or aggravated any medical condition.

In support of her claim, appellant submitted August and September 1999 reports from Dr. Harriman, an attending orthopedic surgeon, who opined that appellant's condition had resolved as of June 2000. Dr. Harriman did not address appellant's condition on and after October 2006, the period at issue in the present claim. This medical evidence is therefore irrelevant to appellant's claim arising in 2006. Appellant also submitted December 2006 and January 2007 reports from Dr. Rothrock, an attending Board-certified family practitioner, who diagnosed chronic low back pain related to lifting at work. The Board notes that pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation.[7] Dr. Rothrock did not diagnose a specific condition or explain how and why the identified work factor of repetitive lifting would cause a back condition resulting in appellant's disability for work as of December 6, 2006. His report is insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship.[8] Appellant has not established that she sustained a back condition in the performance of duty. She submitted insufficient rationalized medical evidence to establish causal relationship.

LEGAL PRECEDENT -- ISSUE 2

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."

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 the claimant has abandoned his or her request for a hearing and return the case to the [district Office]."[9]

[7] *See Robert Broome*, 55 ECAB 339 (2004).

[8] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999). *See also Chris Wells*, 52 ECAB 445 (2001).

ANALYSIS -- ISSUE 2

By February 22, 2007 decision, the Office denied appellant's claim for a back condition. Appellant timely requested an oral hearing. In a May 1, 2007 letter, the Office notified her that a telephonic oral hearing was to be held on June 11, 2007 and provided a telephone number and pass code. On appeal, appellant acknowledged that she failed to attend the scheduled hearing as she did not call in on June 11, 2007. She asserted that she timely notified the Office that she had lost telephone service on June 11, 2007 due to an electrical power failure. Appellant contended that she sent a letter to the Office explaining this on June 19, 2007. The Board notes that there is no copy of a June 19, 2007 letter in the case record. Also, there is no evidence of record indicating that appellant telephoned the Office within 10 days of June 11, 2007 to explain her failure to call in for the scheduled hearing. As noted, appellant must provide an explanation for her failure to appear within 10 days of the June 11, 2007 hearing. But there is no evidence of record that she explained her failure to appear at the scheduled hearing within 10 days of June 11, 2007.

The evidence establishes that appellant did not request a postponement of the hearing, failed to appear at the hearing by calling in and failed to provide adequate explanation for her failure to appear within 10 days. The Board therefore finds that appellant abandoned her request for a hearing in this case.

CONCLUSION

The Board finds that appellant has not established that she sustained a back condition in the performance of duty as alleged. It further finds that the Office properly found that appellant abandoned her request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 21 and February 22, 2007 are affirmed.

Issued: January 25, 2008
Washington, DC

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

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

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