

degenerative joint disease but no other abnormalities. On November 15, 2006 appellant filed a claim for a recurrence of disability commencing in February 2002.

In reports dated March 14 to August 30, 2006, Dr. Philip J. Branson, an attending orthopedic surgeon, stated that appellant had experienced left knee pain for several years. He indicated that left knee arthroscopic surgery performed on April 13, 2006 revealed a medial and lateral meniscal tear. Dr. Branson provided findings on physical examination and diagnosed osteoarthritis of the left and right knee and a degenerative medial meniscal tear of the left knee.

On December 8, 2006 the Office asked appellant to provide additional information regarding his claimed recurrence of disability. It requested medical evidence containing a diagnosis and an explanation as to how the diagnosed condition was causally related to his February 11, 1992 employment injury. No additional evidence was received.

By decision dated January 12, 2007, the Office denied appellant's claim for a recurrence of disability in February 2002.

Appellant requested an oral hearing or a telephonic hearing. In an April 13, 2007 notice, the Office advised appellant that a telephonic hearing would be held on May 14, 2007 at 2:45 p.m. The notice was sent to his address of record. Appellant did not attend the telephonic hearing.

By decision dated June 4, 2007, the Office found that appellant abandoned his request for a hearing. He was not available for the telephonic hearing scheduled for May 14, 2007 although a notice of the telephonic hearing had been sent to him 30 days in advance. Appellant did not contact the Office before or after the scheduled hearing to explain his failure to attend.

LEGAL PRECEDENT -- ISSUE 1

An employee has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.¹ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.² Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.³

¹ *David H. Goss*, 32 ECAB 24 (1980).

² *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

³ *Edward H. Horten*, 41 ECAB 301 (1989).

Section 10.5(x) of the Office's regulations⁴ states:

“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness....”

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a left knee contusion on February 11, 1992 while in the performance of duty. On November 15, 2006 appellant filed a claim for a recurrence of disability as of February 2002. In 2006, Dr. Branson noted that appellant had experienced left knee pain for several years. He provided findings on physical examination and diagnosed osteoarthritis of both knees and a degenerative medial meniscal tear of the left knee. The Office has not accepted a left knee meniscus tear or osteoarthritis as causally related to appellant's February 11, 1992 employment injury, a left knee contusion. Dr. Branson did not adequately explain how the diagnosed conditions were causally related to the February 11, 1992 left knee contusion. For these reasons, his report is not sufficient to establish that appellant sustained a recurrence of disability in February 2002 as a result of his February 11, 1992 employment injury.

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 [of Labor] under subsection (a) of this section is entitled, on request made within 30 days after the date of the 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 [d]istrict Office.”⁵

⁴ 20 C.F.R. § 10.5(x).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999); *see also G.J.*, 58 ECAB ___ (Docket No. 07-1028, issued August 16, 2007).

ANALYSIS -- ISSUE 2

By decision dated January 12, 2007, the Office denied appellant's claim for a recurrence of disability in February 2002. Appellant timely requested a hearing. In an April 13, 2007 letter, the Office notified him that a telephonic hearing was scheduled for May 14, 2007 at 2:45 p.m. This notice was properly sent to appellant's address of record. He did not attend. As noted, appellant was required to provide an explanation for his failure to attend within 10 days of the May 14, 2007 hearing. However, there is no evidence of record that he explained his failure to attend within 10 days of the hearing date.

The evidence establishes that appellant did not request a postponement of the hearing, failed to attend the hearing and failed to provide adequate explanation for his failure to attend within 10 days of the hearing date. The Board therefore finds that he abandoned his request for a hearing.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability in February 2002 causally related to his February 11, 1992 employment injury. The Board further finds that the Office properly determined that appellant abandoned his request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 4 and January 12, 2007 are affirmed.

Issued: January 25, 2008
Washington, DC

David S. Gerson, Judge
Employees Compensation Appeals Board

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

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