United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 08-597**
	)	**Issued: June 19, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 20, 2007 appellant timely appealed the April 11, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his occupational disease claim. He also timely appealed the Office's September 19, 2007 nonmerit decision that found he abandoned his request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty; and (2) whether appellant abandoned his request for an oral hearing.

FACTUAL HISTORY

Appellant, a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) for right ankle pain. He identified December 22, 2006 as the date of injury. Appellant attributed his condition to "wear and tear" from constant walking up and down steps, streets and sidewalks. On December 22, 2006 he was treated in the Providence Hospital emergency department and

received a diagnosis of right ankle tendinitis. The reported history of illness was "right ankle pain, no trauma, started while at work carrying mail." Physical examination revealed mild fibula swelling of the right foot. An x-ray demonstrated "no fracture." Appellant was released later that evening and advised to follow up with the hospital's Wellness Institute in two to three days. When he visited the Wellness Institute on January 3, 2007, he received limited-duty work restrictions for a five-day period beginning January 4, 2007. Appellant was advised to return for a follow-up examination on January 8, 2007.

In a decision dated April 11, 2007, the Office denied appellant's December 22, 2006 claim for a right ankle injury. It found that the evidence did not establish that the claimed medical condition was employment related. Additionally, the Office noted that the December 22, 2006 emergency department treatment records were insufficient to meet appellant's burden because they were not signed by a physician.

On May 6, 2007 appellant requested an oral hearing. The Branch of Hearings and Review acknowledged receipt of appellant's hearing request by letter dated May 16, 2007. And on July 25, 2007 the Branch of Hearings and Review issued a notice advising appellant that an informal hearing was scheduled for September 4, 2007. Both the May 16, 2007 acknowledgement and the July 25, 2007 hearing notice were sent to appellant's address of record, the same address where the Office previously mailed the April 11, 2007 decision.

By decision dated September 19, 2007, the Branch of Hearings and Review found that appellant abandoned his request for a hearing. The decision noted that a hearing was scheduled for September 4, 2007 and appellant had been provided a 30-day advance written notice of the hearing. However, he did not attend the scheduled hearing and did not provide an explanation for his absence. Based on these factors, the Office concluded that appellant had abandoned his hearing request.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[2]

[1] 5 U.S.C. §§ 8101-8193 (2000).

[2] 20 C.F.R. § 10.115(e), (f) (2007); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.[3]

ANALYSIS -- ISSUE 1

The Office denied appellant's claim because the record did not establish that his diagnosed right ankle tendinitis was employment related. Additionally, it indicated that the December 22, 2006 emergency department treatment records had not been signed by a physician. This latter finding is incorrect. While appellant was examined by a physician assistant on December 22, 2006, the examination results and diagnosis were subsequently reviewed and "electronically co-signed" by Dr. Ramola S. Abhyankar. Absent Dr. Abhyankar's endorsement, the physician assistant's diagnosis would not suffice for purposes of establishing a medical condition.[4]

Although a diagnosis of right ankle tendinitis has been established, the record does not demonstrate that this condition is employment related. Other than noting appellant's statement that his right ankle pain started while at work carrying mail, the December 22, 2006 emergency department treatment records do not include a specific finding regarding the etiology of appellant's condition. There is no documented opinion on causal relationship. Appellant stated that he was advised in the emergency room that tendinitis was caused by constant walking and repeated climbing and descending stairs. Notwithstanding what appellant was reportedly told by the physician assistant, the current record does not establish a causal relationship between his employment and his diagnosed right ankle condition. Accordingly, the Office properly denied appellant's occupational disease claim.

LEGAL PRECEDENT -- ISSUE 2

A claimant dissatisfied with a decision on his claim is entitled, upon timely request, to a hearing before a representative of the Office.[5] Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date.[6] The Office has the burden of proving that it mailed the claimant a notice of the date and time of the scheduled hearing.[7] Assuming proper notice has been provided by the Office, a hearing is

[3] *Victor J. Woodhams*, *supra* note 2.

[4] A physician assistant is not competent to render a medical opinion because he or she is not considered a "physician," as that term is defined under 5 U.S.C. § 8101(2). *See, e.g., Roy L. Humphrey*, 57 ECAB 238, 242 (2005).

[5] 5 U.S.C. § 8124(b); 20 C.F.R. § 10.616(a).

[6] 20 C.F.R. § 10.617(b).

[7] *Nelson R. Hubbard*, 54 ECAB 156, 157 (2002).

considered to have been abandoned when the following conditions have been met: (1) the claimant has not requested a postponement; (2) the claimant has failed to appear at a scheduled hearing; and (3) the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.[8]

ANALYSIS -- ISSUE 2

Appellant claims he missed the hearing because he did not receive notification that it was scheduled for September 4, 2007. A copy of the July 25, 2007 hearing notice is included in the record. The Branch of Hearings and Review sent the notice to appellant's address of record, which is the same P.O. Box number in Washington, DC that appeared on appellant's claim form and where the Office previously mailed the April 11, 2007 decision. This is also the same address appellant used with respect to the filing of the current appeal.

In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient.[9] This presumption is commonly referred to as the "mailbox rule."[10] It arises when the record reflects that the hearing notice was properly addressed and duly mailed.[11] The current record supports invocation of the mailbox rule and appellant has not submitted any evidence to rebut the presumption. Accordingly, the Board finds that the Branch of Hearings and Review provided appellant timely notification of the hearing scheduled for September 4, 2007. Appellant did not attend the hearing, he did not request postponement and he did not contact the Office within 10 days after the scheduled hearing. Therefore, all conditions necessary for a finding of abandonment have been met.

CONCLUSION

Appellant has not established that he sustained an injury in the performance of duty. Additionally, the Branch of Hearings and Review properly found that appellant abandoned his request for an oral hearing.

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

[9] *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

[10] *Id.*

[11] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 19 and April 11, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 19, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board