United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 08-1781**
	)	**Issued: January 9, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Buffalo, NY, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2008 appellant filed a timely appeal from a January 8, 2008 decision of the Office of Workers' Compensation Programs denying her claim for fact of injury and a May 27, 2008 decision finding that she had 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 this case.

ISSUES

The issues are: (1) whether appellant established that she was injured on November 8, 2007 in the performance of duty, as alleged; and (2) whether the Office properly found that she abandoned her request for a hearing. On appeal she alleged that she forgot about her hearing and unsuccessfully attempted to telephone the hearing representative the day after her scheduled hearing.

FACTUAL HISTORY

On November 16, 2007 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1), alleging that, on November 8, 2007, while picking up trays of

damaged mail, she experienced pain and numbness in her upper neck, through her left arm, and to the tips of her fingers. At the time, she was performing light duty from a March 29, 2003 work injury.

In a November 23, 2007 letter, the employing establishment controverted appellant's claim, arguing that she did not report her injury for eight days and continued working throughout this time.

On December 3, 2007 the Office informed appellant of the deficiencies of her claim and requested additional information.

In a December 19, 2007 statement, appellant alleged that after experiencing pain on November 8, 2007 the pain subsided and she only felt residual stiffness for the next several days until the pain moved to her left shoulder, elbow and fingers. She claimed she was diagnosed with a pinched nerve.

Appellant also submitted several medical records. In a November 15, 2007 medical report, Dr. Jenny Hyppolite, a Board-certified internist, recorded appellant's claims that her injury occurred at work while she was lifting a full mail tray. In response to a question asking whether the relayed history was cause of appellant's injury, she answered "yes." A corresponding November 15, 2007 radiology report of appellant's cervical spine showed degenerative changes with foraminal narrowing. Appellant also submitted a September 23, 2006 report addressing her prior work injury, a December 12, 2007 medical report and note signed by a nurse practitioner.

In a decision dated January 8, 2008, the Office denied appellant's claim finding that the medical evidence was insufficient to establish that she sustained an injury in the performance of duty, as alleged.

On January 29, 2008 appellant requested a telephonic hearing by an Office hearing representative. In a letter dated April 14, 2008, the Office notified her that her hearing was scheduled for May 13, 2008.[1]

In a May 27, 2008 decision, the Office determined that appellant abandoned her request for a hearing, as she failed to appear at her telephonic hearing and she did not contact the Office either prior or subsequent to the scheduled hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of the reliable,

[1] In a letter dated February 1, 2008, appellant submitted additional medical evidence and requested reconsideration. On March 5, 2008 the Office notified her that she could only request one appeal right at a time and that because she had already requested an oral hearing, her reconsideration request would not be pursued.

[2] 5 U.S.C. §§ 8101-8193.

probative and substantial evidence,[3] including that she is an "employee" within the meaning of the Act[4] and that she filed her claim within the applicable time limitation.[5] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[9]

ANALYSIS -- ISSUE 1

The Office accepted that appellant experienced pain in her upper extremities when she picked up trays of damaged mail in the performance of duty on November 8, 2007. The issue is whether appellant sustained an injury on November 8, 2007 while picking up trays of damaged mail. The Board finds that appellant did not submit sufficient medical evidence to establish her burden of proof.

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[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[5] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[6] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[9] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In order to establish causation, appellant is required to submit rationalized medical evidence, from a qualified physician, explaining how her injury is related to her employment incident. She submitted a September 23, 2006 report, a December 12, 2007 report and note signed by a nurse practitioner and a November 15, 2007 medical report signed by Dr. Hyppolite. A nurse is not considered a qualified physician under the Act and therefore the September 23, 2006 report and December 12, 2007 note and record are of no probative value.[10]

The November 15, 2007 report fails to establish causation because it does not contain medical rationale. Dr. Hyppolite recorded appellant's claims that she was injured while picking up mail and, where asked whether this incident caused appellant's injury, the doctor answered "yes." The Board has held that an opinion on causal relationship, which consists only of a physician answering "yes" to a medical form report question on whether the claimant's disability was related to the history, is of diminished probative value.[11] Because Dr. Hyppolite did not include any explanation or rationale for her opinion that appellant's injury was related to her work incident, this report is of diminished probative value.

The only other medical evidence of record is a September 23, 2006 medical report. This report predates appellant's November 8, 2007 incident and is insufficient to establish causation.

The Board finds that appellant has not established with sufficient medical evidence that her injury was caused by picking up trays of damaged mail on November 8, 2007.

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."[12]

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

[10] Under the Act, a "physician" includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

[11] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

[12] 5 U.S.C. § 8124(b)(1).

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]."[13]

ANALYSIS -- ISSUE 2

Appellant was notified 30 days in advance that a telephonic hearing was scheduled for May 13, 2008. On appeal, appellant stated that she forgot about her hearing and remembered the next day, when she unsuccessfully attempted to contact the hearing representative.

The Board notes, however, that appellant was required to provide an explanation for her failure to appear within 10 days of her May 13, 2008 telephonic hearing. For the first time on appeal, she contended that she forgot about her hearing and unsuccessfully attempted to contact the hearing representative after her scheduled hearing. The Board finds that there is no evidence of record with respect to appellant's failure to appear at the scheduled hearing that was received by the Office within 10 days of the scheduled hearing.[14]

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

CONCLUSION

The Board finds that appellant failed to establish that she was injured on November 8, 2007 in the performance of duty, as alleged. The Board also finds that the Office properly found that appellant abandoned her hearing request.

[13] 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 date August 16, 2007).

[14] *See William D. Ellis*, Docket No. 05-1961 (issued December 14, 2005) (where the Board found that appellant abandoned his request for a hearing despite his contentions on appeal that he was stuck in traffic and that he unsuccessfully attempted to contact a hearing representative by telephone).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 27 and January 8, 2008 decisions are affirmed.

Issued: January 9, 2009
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