United States Department of Labor
Employees' Compensation Appeals Board

H.C., Appellant	)	
and	)	**Docket No. 08-2490**
	)	**Issued: March 20, 2009**
DEPARTMENT OF VETERANS AFFAIRS, CENTRAL ALABAMA, VETERANS HEALTH CARE SYSTEM, Montgomery, AL, 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 September 16, 2008 appellant filed a timely appeal from a February 5, 2008 merit decision denying her compensation claim and a July 7, 2008 nonmerit decision of the Office of Workers' Compensation Programs 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 and the nonmerit decision.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office properly determined that appellant abandoned her hearing request.

FACTUAL HISTORY

On December 10, 2007 appellant, then a 61-year-old supervisory operations clerk, filed an occupational disease claim (Form CA-2) for pain in her left wrist and hand. She attributed her

condition to repetitively lifting boxes and merchandise in the course of her employment. Appellant stated that she first became aware of her condition and its connection to her employment on September 1, 2007.

Appellant submitted no medical evidence in support of her claim and by letter dated December 14, 2007 the Office notified appellant that the information she had submitted with her claim was insufficient to establish that she sustained an injury on the date alleged. The Office requested that appellant submit comprehensive medical records and evidence.

On January 7, 2008 appellant responded to the Office's inquiries. She submitted a June 15, 2004 medical report signed by Dr. Jeffery Eng, a Board-certified physiatrist, proffering a diagnosis of left carpal tunnel syndrome of moderate to severe intensity. Dr. Eng noted in appellant's history a February 2004 injury when a safe door closed on her hand.

Appellant submitted several medical notes from a Dr. Palmer.[1] She also submitted a June 12, 2004 medical report signed by Dr. Eng detailing the results of nerve conduction and electromyography diagnostic tests performed on appellant's left arm and wrist.

By decision dated February 5, 2008, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to an established work-related event as required by the Federal Employees' Compensation Act. It noted that appellant had a prior claim, case #xxxxxx641, for left carpal tunnel syndrome which was denied August 9, 2006.

On March 4, 2008 appellant requested an oral hearing.

By notice dated May 16, 2008, the Office advised appellant that a hearing was scheduled for June 16, 2008 and provided the place and time. The notice was sent to her address of record. It was not returned to the Office as undeliverable. Appellant did not appear for her scheduled hearing.

By decision dated July 7, 2008, the Office found that appellant had abandoned her request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Act[2] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including

[1] The Board notes that the evidence of record discloses no additional information concerning the identity of this physician. Regardless, in a February 3, 2005 note, Dr. Palmer diagnosed appellant with left hand pain and opined that appellant could have some underlying carpal tunnel but that this was probably not related to the question along the metacarpophalangeal joint. In this note, he makes note of an injury occurring 11 to 12 months ago when a safe door slammed close on appellant's hand and that, since the date of that injury, she has experienced pain in this hand extending out into the fingers. Dr. Palmer saw appellant on three subsequent occasions, March 3, April 7 and July 28, 2005 concerning carpal tunnel.

[2] 5 U.S.C. §§ 8101-8193.

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.[3]

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 employment factors identified by the claimant.[4]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[5] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[6] Additionally, in order to be considered rationalized, the 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.[7]

ANALYSIS -- ISSUE 1

Appellant identified loading and unloading boxes and merchandise as employment factors contributing to her injury. It is her burden to submit rationalized medical evidence establishing a diagnosed condition causally related to the identified employment factors and appellant's self-diagnosed symptoms are not sufficient substantive evidence for purposes of this analysis.[8] The evidence before the Office at the time of the February 5, 2008 decision did not contain a medical report with a rationalized medical opinion on causal relationship but rather pertained to a February 2004 incident concerning carpal tunnel produced by a safe door incident, not lifting boxes and merchandise in the course of her employment as alleged. Thus appellant has not submitted sufficient medical evidence.

Dr. Eng provided a diagnosis of left carpal tunnel syndrome without providing a complete medical history or an opinion on the causal relationship of the condition to appellant's employment. While Dr. Palmer provided a diagnosis of left hand pain, the Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[9] As noted, a

[3] 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4] *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[5] *See Robert G. Morris*, 48 ECAB 238 (1996).

[6] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *Id.*

[8] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[9] *Robert Broome*, 55 ECAB 339, 342 (2004).

rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale. Neither report satisfies appellant's burden because they pertain to carpal tunnel produced by a safe door, not the factors of employment identified by appellant, and lack a rationalized medical opinion.

In the absence of rationalized medical opinion evidence, the Board finds that appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

The statutory right to a hearing under the Act, 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 [district Office]."[10]

This course of action is correct even if the Branch of Hearings and Review 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.[11]

ANALYSIS -- ISSUE 2

On appeal appellant argues that she tried to contact the telephone number on the scheduled date of the hearing per the notice of May 16, 2008 but that she was directed to another telephone number which fed into a voicemail box. There is no evidence of record however showing that appellant contacted the hearing representative on or within 10 days of June 16, 2008 and explained her failure to appear.

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[10] 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); *see also Claudia J. Whitten*, 52 ECAB 483 (2001).

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

The record establishes that, on May 16, 2008, in response to appellant's request for an oral hearing, the Office mailed an appropriate notice of the June 16, 2008 hearing. The Board notes that the notice was sent 30 days prior to the scheduled hearing.[12] The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she 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's procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.[13]

CONCLUSION

The Board finds that the Office properly determined that appellant did not establish that she sustained an injury causally related to factors of her federal employment and had abandoned her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 7 and February 5, 2008 decisions are affirmed.

Issued: March 20, 2009
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

[12] *See* 20 C.F.R. § 10.617(b) (providing that the Office will mail a notice of the time and place of the oral hearing to the claimant at least 30 days before the scheduled date).

[13] *See also Claudia J. Whitten*, *supra* note 10.