

The Office accepted his claim for a torn right rotator cuff. On September 28, 2006 appellant underwent surgery to repair his torn right rotator cuff.¹

In a March 30, 2007 report, Dr. Vestinia M. Bridges, an attending Board-certified orthopedic surgeon, stated that appellant had no postsurgical problems with his right shoulder except for some weakness and pain with continued overhead reaching and lifting. On May 11, 2007 she stated that he had a neck condition that was not related to his employment. On June 21, 2007 Dr. Bridges stated that appellant's right shoulder symptoms were minimal but he should remain on light duty. She also diagnosed acromioclavicular arthritis in his right shoulder. In an August 29, 2007 report, Dr. Bridges stated that appellant had a permanent work restriction of intermittent lifting of 25 pounds or less and continuous lifting of 10 pounds or less. She indicated that his main concern was his left shoulder condition. Appellant was able to perform his distribution clerk position with his permanent restrictions.

On December 17, 2007 appellant filed a claim for compensation for lost wages for October 17 to 19, 2007.

In an October 31, 2007 report, Dr. Bridges provided a history that appellant lifted tubs that may have exceeded his weight limitation. Appellant was off work from October 17 to 19, 2007.² Dr. Bridges discharged him from care with permanent weight lifting restrictions. In a disability certificate dated October 31, 2007, she indicated that appellant was disabled from October 17 to 19, 2007 due to an April 16, 2005 injury.

In a November 28, 2007 report, Dr. Chester A. DiLallo, a Board-certified orthopedic surgeon, noted that appellant was on permanent light duty due to his July 8, 2006 torn right rotator cuff. However, he did not provide any dates of disability.³

By letter dated January 2, 2008, the Office asked appellant to provide additional medical evidence establishing that his disability between October 17 and 19, 2007 was causally related to his July 8, 2006 employment injury.

In a disability certificate dated January 25, 2008, Dr. Bridges stated that appellant was off work from October 17 to 19, 2007 for acute right shoulder bursitis. Appellant was unable to lift his arm. In a January 25, 2008 report, Dr. Bridges stated that appellant had right shoulder pain. She noted that, if he experienced acute episodes of right shoulder synovitis or bursitis, she could give him injections but he declined treatment at that visit.

¹ On November 16, 2006 he underwent surgical repair of a left rotator cuff tear which has not been accepted by the Office as work related.

² Dr. Bridges indicated that the dates appellant was off work were November 17 to 19, 2007. This is clearly an error as the report was dated October 31, 2007.

³ Dr. DiLallo provided another report dated November 28, 2007 regarding appellant's separate claim for a left knee injury on February 10, 1987.

By decision dated February 4, 2008, the Office denied appellant's claim for lost wages on the grounds that the evidence failed to establish that his disability from October 17 to 19, 2007 was causally related to his July 8, 2006 employment-related torn right rotator cuff.

On February 11, 2008 appellant requested an oral hearing. The address provided on his appeal request form was his address of record.⁴

By notice dated May 21, 2008, the Office advised appellant that a hearing was scheduled for July 2, 2008 and provided the place and time. The notice was sent to his address of record. It was not returned to the Office as undeliverable. Appellant did not appear for the scheduled hearing.

By decision dated August 25, 2008, the Office found that appellant had abandoned his request for a hearing.

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.⁵ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁶ 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.⁷

ANALYSIS -- ISSUE 1

Dr. Bridges reported that appellant experienced problems with his neck and left shoulder and right shoulder arthritis between May and August 2007. These conditions were not accepted by the Office as work related. She provided insufficient medical rationale explaining how or whether the conditions were causally related to the July 8, 2006 employment injury. Dr. Bridges also did not explain whether these conditions were involved in appellant's disability from October 17 to 19, 2007. On October 31, 2007 she stated that appellant was off work from October 17 to 19, 2007. Dr. Bridges provided a history that he lifted tubs which may have exceeded his weight limitation. However, she did not provide findings on physical examination or medical rationale explaining how the claimed disability from October 17 to 19, 2007 was causally related to appellant's accepted torn right rotator cuff. In a disability certificate, Dr. Bridges indicated that appellant was disabled from October 17 to 19, 2007 due to an April 16, 2005 injury. However, the date of injury in this case is July 8, 2006. Therefore, this

⁴ On February 15, 2008 appellant sent the Office a request to change physicians. He gave the same address of record as provided in his February 11, 2008 hearing request.

⁵ *David H. Goss*, 32 ECAB 24 (1980).

⁶ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁷ *Edward H. Horten*, 41 ECAB 301 (1989).

disability certificate is of limited probative value and is not sufficient to establish that appellant's disability from October 17 to 19, 2007 was causally related to his July 8, 2006 accepted torn right rotator cuff.

In a January 25, 2008 disability certificate, Dr. Bridges stated that appellant was off work from October 17 to 19, 2007 for acute right shoulder bursitis. Right shoulder bursitis is not an accepted condition and Dr. Bridges did not explain how this condition was causally related to appellant's accepted July 8, 2006 torn right rotator cuff. In a January 25, 2008 report, Dr. Bridges stated that appellant had right shoulder pain and could be treated with injections if he experienced episodes of right shoulder synovitis or bursitis. However, she failed to provide a rationalized medical opinion explaining how synovitis and bursitis were causally related to appellant's accepted torn right rotator cuff. For these reasons, the reports of Dr. Bridges are not sufficient to establish that appellant was disabled from October 17 to 19, 2007 due to his accepted July 8, 2006 torn right rotator cuff. Appellant has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

The statutory right to a hearing under the Federal Employees' Compensation 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."⁸

ANALYSIS -- ISSUE 2

The record establishes that on May 21, 2008, in response to appellant's request for an oral hearing, the Office mailed an appropriate notice of the scheduled July 2, 2008 hearing. The Board notes that the notice was sent more than 30 days prior to the hearing. Appellant asserts that he never received a copy of the hearing notice. However, the record reflects that a copy of the May 21, 2008 hearing notice was mailed to the correct address of record for appellant and was not returned as undeliverable. The Board has found that, in the absence of evidence to the

⁸ 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).

contrary, a letter properly addressed and mailed in the due course of business, such as in the course of the Office's daily activities, is presumed to have arrived at the mailing address in due course.⁹ This is known as the "mailbox rule." As the record reflects that the Office mailed a hearing notice to appellant's address of record, it is presumed that it arrived at his mailing address. The record shows that appellant did not request a postponement of the hearing and failed to provide an explanation for his failure to attend within 10 days of the scheduled date of the hearing. As the circumstances of this case meet the criteria for abandonment, the Board finds that appellant abandoned his request for a hearing.

On appeal, appellant asserts that he did not receive the May 21, 2008 notice of hearing. He states that he moved at the end of April 2008 and filed a change of address with the post office.¹⁰ As noted, the May 21, 2008 notice of hearing was not returned by the post office as undeliverable. Appellant has not rebutted the presumption that the hearing notice was delivered to his address of record.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his disability from October 17 to 19, 2007 was causally related to his July 8, 2006 accepted torn right rotator cuff. The Board further finds that the Office properly found that appellant abandoned his request for a hearing.

⁹ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004); *James A. Gray*, 54 ECAB 277 (2002).

¹⁰ There is no evidence of record that appellant provided a change of address to the Office when he moved in April 2008.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 25 and February 4, 2008 are affirmed.

Issued: March 19, 2009
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