

**United States Department of Labor
Employees' Compensation Appeals Board**

C.O., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Perry Point, MD, Employer)

Docket No. 09-806
Issued: October 16, 2009

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2009 appellant filed a timely appeal from a July 22, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of medical condition and a December 29, 2008 decision of an Office hearing representative finding that she 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 the case.

ISSUES

The issues are: (1) whether appellant established that she sustained a recurrence of medical condition in March 2008; and (2) whether the Office properly determined that she abandoned her request for a telephonic hearing before an Office hearing representative.

On appeal, appellant contends that she made a telephone call for the hearing on December 11, 2008 at 3:00 p.m. but was told by an automated voice that her code was invalid. She alleged that she did not have any other number to call until she received the December 29, 2008 decision and that she tried to make several calls subsequent to receiving the decision.

FACTUAL HISTORY

On May 28, 2004 appellant, then a 55-year-old nurse, filed a traumatic injury claim alleging that on May 20, 2004 she experienced pain in her right shoulder while positioning a heavy patient. She worked light duty from May 20 through June 14, 2004. Appellant returned to regular duty on June 15, 2004. On June 22, 2007 she filed a claim for a recurrence of medical condition (Form CA-2a) beginning on February 20, 2005. Appellant contended that since 2004 she experienced numbness radiating into her right hand and fingers. She worked light duty from May 30 through July 22, 2007, at which time she returned to her regular duty. By decision dated August 8, 2007, the Office accepted that appellant sustained a right shoulder strain due to her May 20, 2004 employment injury. In a decision of the same date, it also denied her claim for a 2005 recurrence on the grounds that she did not submit sufficient medical evidence to establish her claim.

On June 4, 2008 appellant filed a claim for a March 2008 recurrence of medical condition Form CA-2a alleging that her pain gradually appeared and that she stopped sleeping at night due to intense pain. The employing establishment controverted the claim.

In a June 10, 2008 letter, the Office advised appellant of the deficiencies in her claim. It requested that she provide additional information and medical evidence. Appellant did not submit any additional evidence.

By decision dated July 22, 2008, the Office denied appellant's claim for a March 3, 2008 recurrence on the grounds that she did not submit sufficient medical evidence to establish that she sustained a condition related to the accepted injury.

On August 15, 2008 appellant filed a request for a telephonic hearing before an Office hearing representative. In a November 5, 2008 letter, the Office notified her that a telephonic hearing was scheduled for December 11, 2008 at 3:00 p.m. Eastern Standard Time. It provided a telephone number and a pass code.

By decision dated December 29, 2008, the Office found that appellant abandoned her request for a telephonic hearing. It found that she was provided 30 days' advance notice of the scheduled December 11, 2008 hearing but that she failed to appear. Further, appellant did not contact the Office either prior or subsequent to the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition is defined in the Office's procedure manual as "the documented need for further treatment of the accepted condition when there has been no work stoppage."¹ When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, an employee is responsible for submitting a medical report that

¹ *J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

contains a description of objective findings and supports causal relationship between the employee's current condition and the previous work injury.²

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.³

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a right shoulder strain as a result of lifting a heavy patient on May 20, 2004. The issue is whether she established that she sustained a recurrence of her accepted medical condition in March 2008.⁴

Appellant did not submit any medical evidence prior to the July 22, 2008 decision to establish that she sustained a recurrence of medical condition causally related to her May 20, 2004 injury. The Office notified her on June 10, 2008 of the deficiencies in her claim and that she was required to submit medical evidence to support her claim. However, appellant did not respond.

An award of benefits may not be based on surmise, conjecture, speculation or upon a claimant's own belief that there is causal relationship between her claimed condition and her employment.⁵ As appellant has failed to submit any medical evidence containing a rationalized opinion establishing that she sustained a recurrence of medical condition in March 2008, the Board finds she has not met her burden of proof.⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Federal Employees' Compensation Act provides that a claimant not satisfied with a decision on her claim is entitled, upon timely request, to a hearing before a representative of the Office.⁷

² *J.F.*, *supra* note 1; Federal (FECA) Procedure Manual, *supra* note 1, Chapter 2.1500.5(b) (September 2003).

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ The Board notes that appellant had worked regular duty since July 22, 2007 and did not allege any partial or total disability.

⁵ See *Ricky S. Storms*, 52 ECAB 349 (2001).

⁶ See *Joan R. Donovan*, 54 ECAB 615 (2003).

⁷ 5 U.S.C. § 1824(b).

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual provides as follows:

“e. Abandonment of Hearing Requests.

(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, H&R (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 DO (District Office).”⁸

ANALYSIS -- ISSUE 2

The Office scheduled a telephonic hearing with an Office hearing representative on December 11, 2008 at 3:00 p.m. Eastern Standard Time. The record shows that the Office mailed appropriate notice to appellant at her address of record 30 days prior to the scheduled hearing. The record also supports that she did not request postponement, that she failed to appear for the scheduled hearing by making herself available by telephone and that she failed to provide any notification for such failure within 10 days of the scheduled 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 a hearing before an Office hearing representative.⁹

On appeal, appellant contends that she made a telephone call to the hearing on December 11, 2008 at 3:00 p.m. but was told by an automated voice that her code was invalid. She further alleged that she did not have any other number to call until she received the December 29, 2008 decision and that she tried to make several calls subsequent to receiving the decision. The record does not contain any evidence to substantiate appellant's contention that she unsuccessfully attempted to appear at the hearing or that she explained her failure to appear within 10 days of December 11, 2008. The Board finds that she abandoned her request for a hearing.

⁸ Federal (FECA) Procedure Manual, Chapter 2 -- Claims, *Abandonment of Hearing Request*, Chapter 2.1601.6(e) (January 1999).

⁹ See *F.A.*, 60 ECAB ____ (Docket No. 1519, issued December 18, 2008); *Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of medical condition in March 2008. The Board also finds that the Office properly determined that she abandoned her request for a telephonic hearing before an Office hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the December 29 and July 22, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 16, 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