



Appellant submitted a November 5, 2008 unsigned note from St. Anthony Hospital documenting that he received treatment on November 5, 2008 and it was seeking payment for its services.

Appellant submitted a November 5, 2008 report (Form CA-17) bearing an illegible signature and diagnosing a sprained ankle.

Appellant submitted a November 12, 2008 note signed by a Shannon Brown, appellant's supervisor, who transported him to the hospital on November 4, 2008 and witnessed the treatment he received.

Appellant submitted a November 13, 2008 report in which Dr. Dale Hall, a podiatrist, reported that x-rays of his left ankle revealed no evidence of fracture or disorientation of the bone.

By decision dated January 30, 2009, the Office denied the claim because the evidence of record did not demonstrate that appellant sustained an injury as defined by the Act. It found that the evidence of record did not establish that the employment event occurred as alleged. The Office also found that appellant had not provided sufficient medical evidence demonstrating that an injury occurred as alleged.

On February 12, 2009 appellant requested an oral hearing.

By letter dated April 30, 2009, the Office notified appellant that a hearing was scheduled for June 2, 2009 at 10:00 am. It provided him the telephone number to call to participate and he was advised to be present.

Appellant did not attend the hearing and by decision dated June 30, 2009, the Office denied his request finding that he had abandoned his hearing request.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>2</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>3</sup> As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>4</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *J.P.*, 59 ECAB \_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>3</sup> *G.T.*, 59 ECAB \_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *G.T.*, *supra* note 3; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

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.<sup>6</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

There is nothing in the record to dispute that appellant turned his ankle on November 4, 2008 while going on break as alleged. Appellant's burden is to demonstrate that the identified employment incident caused a medically-diagnosed injury. Causal relationship is a medical issue which can only be proven by probative rationalized medical opinion evidence. The Board finds appellant has not submitted sufficient probative rationalized medical evidence supporting his claim and, accordingly, has not established that he sustained an injury in the performance of duty on November 4, 2008 causally related to his employment.<sup>9</sup>

The evidence of record consists of a report (Form CA-17) bearing an illegible signature and a note from Dr. Hall. The CA-17 lacks probative value because unsigned reports or reports bearing illegible signatures are not considered probative medical evidence because they lack proper identification as to whether they were prepared by physicians.<sup>10</sup>

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<sup>5</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>7</sup> *T.H.*, 59 ECAB \_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>8</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> Appellant submitted additional evidence on appeal. As this evidence was not considered by the Office as part of either of its prior decisions, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB \_\_\_ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.)

<sup>10</sup> *See R.M.*, 59 ECAB \_\_\_ (Docket No. 08-734, issued September 5, 2008); *Richard Williams*, 55 ECAB 343 (2004).

While Dr. Hall's note does qualify as medical evidence for purposes of the Act,<sup>11</sup> the substance of his note is such that it has diminished probative value on the issue of causal relationship. His note did not present objective findings on examination or a diagnosis based on those findings. Dr. Hall did not review appellant's history of injury or course of treatment. He did not provide a rationalized medical opinion explaining how the November 4, 2008 employment incident caused any diagnosed condition. These deficiencies reduce the probative value of Dr. Hall's opinion and that of his note such that it is insufficient to satisfy appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>12</sup> While he established an employment incident that he deems responsible for his condition, he has not submitted sufficient medical evidence demonstrating that this employment incident caused a medically-diagnosed personal injury and, consequently, the Board finds he has not established that he sustained an injury in the performance of duty on November 4, 2008 causally related to his employment.

### **LEGAL PRECEDENT -- ISSUE 2**

With respect to hearing requests, Chapter 2.1601.6(e) 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]."<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

In finding that appellant had abandoned his February 12, 2009 request for a hearing, the Office noted that a telephone hearing had been scheduled for June 2, 2009. The record shows that it mailed him an appropriate notice of the hearing to his address of record. Appellant did not telephone the hearing representative as instructed. While he maintains on appeal that he never received notice of the hearing date, the record contains no evidence that the Office's April 30, 2009 notice was improperly addressed or was returned as undeliverable. The record contains no

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<sup>11</sup> Under section 8101(2), the definition of a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2).

<sup>12</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearing and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); see also *Claudia J. Whitten*, 52 ECAB 483 (2001); 20 C.F.R. § 10.622.

evidence that appellant contacted the Office seeking postponement or inquiring on the status of his hearing request. The record contains no evidence that appellant contacted the Office within 10 days to reschedule the hearing or explain his failure to participate in the scheduled telephonic hearing.

Appellant failed to participate in the scheduled hearing and did not provide any notification of such failure within 10 days of the scheduled hearing. As the circumstances of this case meet the criteria for abandonment as provided in Chapter 2.1601.6(e) of the Office's procedure manual, the Board finds that appellant abandoned his request for an oral hearing.

### **CONCLUSION**

The Board finds appellant has not established that he sustained an injury on November 4, 2008 in the performance of duty causally related to his employment. The Board further finds that the Office properly determined that appellant abandoned his request for an oral hearing.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 30 and January 30, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2010  
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