United States Department of Labor
Employees' Compensation Appeals Board

V.R., Appellant	)	
and	)	**Docket No. 09-1701**
	)	**Issued: March 9, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, 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 June 17, 2009 appellant filed a timely appeal from a December 23, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim for an occupational disease and a May 20, 2009 decision finding that she had abandoned her request for an oral hearing before an Office hearing representative.[1] 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 an occupational disease causally related to the factors of her federal employment; and (2) whether the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.

On appeal, appellant contends that she did not receive notice of her scheduled oral hearing.

[1] The Board received appellant's appeal on June 25, 2009 by letter postmarked June 17, 2009.

FACTUAL HISTORY

On September 4, 2008 appellant, then a 55-year-old small package and bundle sorting clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her knee from twisting and bending while sweeping and loading trays to all-purpose containers. She further claimed a shoulder injury from lifting and pulling trays from the upper sections of racks in automation. Appellant indicated that she first realized her conditions were caused or aggravated by her employment on August 29, 2008. She also stated that she first noticed her knee condition in January 2008 and her shoulder condition in May 2008. The employing establishment controverted the claim.

By letter dated September 10, 2008, the Office notified appellant of the deficiencies in her claim and requested she provide additional factual and medical evidence.

A position description of a parcel post distributor listed duties including operating an electromechanical parcel post sorting machine and bundling machine and other clerical duties as assigned.

Appellant subsequently submitted statements dated August 29 and September 20, 2008 describing the history of her knee and shoulder conditions. She claimed that she first noticed her shoulder hurting in May 2008 while working in automation. Appellant stated that she felt as though she strained her shoulder while sweeping mail on the top tier of the machines, pulling and lifting trays and loading them into all-purpose containers. She further stated that she experienced pain while sweeping heavy top trays, reaching to pull trays down from the top rack of the machine, reaching above her head, making new boxes for the small packages and bundle sorting setup and lifting heavy flat sorter tubs. Appellant alleged that her shoulder condition had worsened and that she had limited mobility. Further, she claimed that she twisted her knee in January 2008 while bending and twisting while loading the bottom section of an all-purpose container with full trays. Appellant stated that her knee made a loud popping sound at the time and since the injury her knee catches and locks intermittently and aches continually.

Medical chart notes for the period December 21, 1992 through September 16, 2002 addressed a July 8, 1993 right shoulder and neck injury due to sweeping a machine and a March 18, 1994 left hip, buttocks and back injury from picking up tray of flats.

By decision dated December 23, 2008, the Office denied appellant's occupational disease claim on the grounds that the factual evidence was insufficient to establish that her claimed work factors occurred as alleged. Further, it found that she did not submit sufficient medical evidence containing a diagnosis which could be connected to the claimed work factors.

On January 13, 2009 appellant filed a request for an oral hearing before an Office hearing representative.

In an April 1, 2009 letter, the Office notified appellant that an oral hearing before an Office hearing representative was scheduled for May 7, 2009 at 10:00 a.m.

By decision dated May 20, 2009, an Office hearing representative found that appellant abandoned her request for an oral hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee who claims benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[3] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[4] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[6] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[8]

ANALYSIS -- ISSUE 1

The issue is whether appellant established that she sustained an occupational disease causally related to the factors of her federal employment. The Office denied the claim on the grounds that appellant did not submit a sufficiently detailed statement identifying the work factors that she believed caused an employment injury.

The Board finds that appellant has established the factual requirements of her occupational disease claim. In her claim form and subsequent statements, appellant specifically identified the employment duties that she believed caused her shoulder condition. These duties included sweeping heavy top trays, reaching to pull trays down from the top rack of a machine,

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[2] 5 U.S.C. §§ 8101-8193.

[3] *D.B.*, 58 ECAB 464 (2007); *George W. Glavis*, 5 ECAB 363, 365 (1953).

[4] *M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *George W. Glavis*, *supra* note 3.

[5] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

[6] *M.H.*, *supra* note 4; *John D. Shreve*, 6 ECAB 718, 719 (1954).

[7] *S.P.*, *supra* note 5; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

[8] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

lifting trays and loading them into all-purpose containers, making new boxes for the small packages and bundle sorting setup and lifting heavy flat sorter tubs. Further, appellant stated that her claimed knee condition was related to bending and twisting while loading the bottom section of all-purpose containers with full trays. Appellant's statements regarding her employment duties are relatively consistent with each other, the provided position description and the surrounding circumstances. There is no evidence from the employing establishment to refute her claims regarding her employment activities.[9] Therefore, the Board finds that appellant has sufficiently identified and established the employment factors that she believed caused an employment injury.

Although appellant established the factual aspect of her claim, she still has the burden to show that she sustained a resulting injury due to her employment factors.[10] The only medical evidence in this case is medical chart notes for the period December 21, 1992 through September 16, 2002. There is no evidence that these notes were signed by a physician, nor do they provide a diagnosis or explain how appellant sustained a shoulder or knee injury due to her employment factors. Moreover, the notes predate appellant's claimed conditions, which did not manifest until 2008. Thus, the chart notes are of diminished probative value.[11] Appellant did not submit any evidence containing a rationalized medical opinion explaining how she sustained a diagnosed shoulder or knee condition causally related to her identified employment factors. Therefore, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury causally related to employment factors.[12]

LEGAL PRECEDENT -- ISSUE 2

Under the Act and its implementing regulations, a claimant who has received a final adverse decision by the Office is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.[13] Unless otherwise directed in writing by the claim, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.[14] The Office has the burden of proving that it mailed notice of a scheduled hearing to a claimant.[15]

The authority governing the abandonment of hearings rests with the Office's procedure manual, which provides that a hearing can be abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a

[9] *See Louise F. Garnett*, 47 ECAB 639 (1996); *Loise G. Moore*, 20 ECAB 165 (1968).

[10] *See Roy L. Humphrey*, *supra* note 8.

[11] *See E.A.*, 58 ECAB 677 (2007); *Merton J. Sills*, 39 ECAB 572 (1988).

[12] *See A.D.*, 58 ECAB 149 (2006).

[13] 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

[14] 20 C.F.R. § 10.617(b).

[15] *See Michelle R. Littlejohn*, 42 ECAB 463 (1991).

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 her request for a hearing and return the case to the district Office.[16]

ANALYSIS -- ISSUE 2

By decision dated December 23, 2008, the Office denied appellant's occupational disease claim. Appellant timely requested an oral hearing before an Office hearing representative. In an April 1, 2009 letter, it notified her that an oral hearing was scheduled for May 7, 2009 at 10:00 a.m. The record shows that appellant did not appear for the scheduled hearing. Further, she did not request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of May 7, 2009. Therefore, the Board finds that she abandoned her request for a hearing.[17]

On appeal, appellant contends that she did not receive notice of the scheduled hearing. The record reflects that a copy of the April 1, 2009 hearing notice was mailed to appellant's last known address of record and was not returned as undeliverable. The Board has found that, in the absence of evidence to the 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. This is known as the mailbox rule.[18] As the Office properly mailed a hearing notice to appellant's address of record, it is presumed to have arrived at her mailing address.

CONCLUSION

The Board finds that appellant established the factors of her federal employment that she believed caused an injury. However, the Board also finds that appellant did not establish that she sustained an injury causally related to her employment factors. Finally, the Board finds that the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.

[16] 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 651 (2007).

[17] *See id.*

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

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2009 and December 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: March 9, 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