United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 10-1765**
	)	**Issued: May 12, 2011**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Baltimore, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2010 appellant filed a timely appeal from January 15 and June 9, 2010 decisions of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on April 10, 2009; and (2) whether appellant abandoned an oral hearing scheduled for May 5, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 24, 2009 appellant, then a 47-year-old tractor-trailer operator, filed a traumatic injury claim alleging that he sustained right shoulder pain on April 10, 2009 while opening the backdoor of a trailer. He did not stop work.

The Office informed appellant in a December 4, 2009 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a medical report containing the history of injury, diagnosis, findings, course of treatment, period and extent of disability, and a physician's explanation as to whether the employment incident caused or aggravated the injury.

In December 3, 2009 reports, Dr. Rosemary Olivo, a Board-certified internist, related that appellant presented with complaints of right shoulder pain since April. She stated that he "was pulling up on a door that was stuck while working as a truck driver for the [employing establishment]" and "felt a wrenching in his right shoulder." Dr. Olivo commented that the "onset of pain in the right shoulder clearly followed the event of wrenching in the right shoulder which [appellant] felt when he pulled up on a door that was jammed while performing his duties at work." She diagnosed a complete rupture of the right shoulder rotator cuff and recommended surgery. Dr. Olivo noted that appellant sustained a prior rotator cuff tear to his left shoulder and had surgery in 2004. In a December 3, 2009 magnetic resonance imaging (MRI) scan report, Dr. John Filigenzi, a Board-certified diagnostic radiologist to whom appellant was referred by Dr. Olivo, found a full thickness tear involving the distal anterior fibers of the supraspinatus tendon, mild tendinosis of the subscapularis tendon and degenerative changes of the acromioclavicular joint of the right shoulder. He noted that "patient motion artifact degrade[d] image quality."

In December 24, 2009 statements, appellant detailed that he was pulling up a 250-pound backdoor of a trailer when it jammed and he felt a sharp pain in his right shoulder. He previously underwent left shoulder rotator cuff surgery on May 14, 2004.

Appellant provided photocopies of a one-page excerpt from unidentified literature, which stated that full thickness rotator cuff tears "are most often the result of impingement, partial thickness rotator cuff tears, heavy lifting or falls." He also provided a position description, a December 3, 2009 orthopedic consultation form and his signed April 10, 2009 employing establishment form rejecting medical care.

By decision dated January 15, 2010, the Office denied appellant's claim, finding the medical evidence insufficient to establish that the April 10, 2009 employment incident caused a right rotator cuff tear.

On January 22, 2010 appellant requested an oral hearing. In a March 30, 2010 notice, the Office's Branch of Hearings and Review scheduled the hearing for 11:30 a.m. on May 5, 2010 at the U.S. Custom House in Baltimore, Maryland. It advised appellant that postponement would only be permitted upon receipt of documentation showing his nonelective hospitalization or that the death of a spouse, parent or child prevented his attendance. The notice was mailed to his address of record.

By decision dated June 9, 2010, the Office found that appellant abandoned his hearing request. It noted that he failed to appear at the hearing and did not contact the Office before or after the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[2] including that he is an "employee" within the meaning of the Act and that he filed his claim within the applicable time limitation.[3] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes 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. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[6]

ANALYSIS -- ISSUE 1

The evidence supports that appellant pulled up the backdoor of a trailer as alleged on April 10, 2009. The Board finds that he did not furnish sufficient medical evidence demonstrating that this employment incident caused or contributed to a right rotator cuff tear or other right shoulder condition.

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *T.H.*, 59 ECAB 388 (2008).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Dr. Olivo noted in a December 3, 2009 report that appellant wrenched his right shoulder while he was pulling up on a door.[7] She diagnosed a complete rupture of the right shoulder rotator cuff and opined that the injury "clearly followed" this work event; however, she did not explain the pathophysiological process by which pulling up on a door would contribute to this rupture.[8] Medical opinion not fortified by medical rationale is of little probative value.[9] Dr. Olivo brief report that appellant was asymptomatic before the incident and symptomatic thereafter, without supporting medical rationale, cannot establish causal relationship.[10] The Board also notes that Dr. Olivo offered no opinion regarding why appellant did not sooner seek medical treatment for complaints of right shoulder pain since April 2009. Appellant did not submit medical evidence more contemporaneous with the claimed date of injury documenting his condition and supporting that it was caused by the April 10, 2009 work incident.[11]

The record also contains photocopies of an unidentified, one-page excerpt describing the primary etiology of full thickness rotator cuff tears as "the result of impingement, partial thickness rotator cuff tears, heavy lifting or falls." The Board has held, though, that articles and excerpts from medical literature are of no evidentiary value as they are not supported by medical opinion relating to the facts of the claimant's specific situation.[12] Dr. Filigenzi's December 3, 2009 MRI scan report, is of limited probative value as it did not offer any opinion regarding the cause of injury.[13] The December 3, 2009 orthopedic consultation form cannot be considered as medical evidence as it was not signed by a physician.[14]

Consequently, appellant did not meet his burden to establish his claim as he has not submitted reasoned medical evidence explaining how the April 10, 2009 work incident caused or aggravated a right shoulder condition.

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

[7] The Board points out that Dr. Olivo failed to identify the date of the injury. *See M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[8] *See Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[9] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[10] *See T.M.*, Docket No. 08-975 (issued February 6, 2009).

[11] *S.S.*, 59 ECAB 315 (2008) (the Board has held that contemporaneous evidence is entitled to greater probative value than later evidence).

[12] *Harry Cowling*, 17 ECAB 426 (1966). *See also Robert S. Winchester*, 54 ECAB 191 (2002).

[13] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[14] *See R.M.*, 59 ECAB 690 (2008) (medical reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence). *See also* 5 U.S.C. § 8101(2). Even if this form was signed by a physician, it would be of limited probative value as it does not address causal relationship.

specified in the decision within 30 days of the date of the decision for which a hearing is sought.[15] Unless otherwise directed in writing by the claims examiner, 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.[16] The Office has the burden of proving that it mailed notice of a scheduled hearing to a claimant.[17]

The Office's procedure manual provides that a hearing can be considered abandoned only under very limited circumstances.[18] All three of the following conditions must be present: (1) the claimant has not requested a postponement; (2) the claimant has failed to appear at a scheduled hearing; and (3) 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 Office hearing representative will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.[19]

ANALYSIS -- ISSUE 2

Appellant argues on appeal that he was never sent the March 30, 2010 notice about the May 5, 2010 hearing date and only became aware of the hearing date when he received the Office's June 15, 2010 decision holding that he abandoned his request for one.[20] As noted, the Office has the burden of proving that it mailed notice of a scheduled hearing to a claimant. The Board has held that, in the absence of evidence to the contrary, a notice mailed to an individual in the ordinary course of business is presumed to have been received by that individual. The presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.[21] Here, the record shows that the Office scheduled a May 5, 2010 hearing and mailed proper written notice with the designated time, date and location of the hearing to appellant's address of record on March 30, 2010. On the other hand, appellant did not submit any rebutting evidence. The record also shows that he did not request postponement or explain his failure to appear at the hearing within 10 days of the scheduled hearing date. Thus, under these circumstances, the Office properly found that appellant abandoned his hearing request.

[15] 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

[16] 20 C.F.R. § 10.617(b).

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

[18] *Claudia J. Whitten*, 52 ECAB 483 (2001).

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

[20] Appellant also asserted that he received a February 6, 2010 letter informing him that the Office "would not be in Baltimore for six to eight months." The record does not contain such a letter.

[21] *Newton D. Lashmett*, 45 ECAB 181 (1993) (mailbox rule); *Michelle R. Littlejohn*, *supra* note 17.

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on April 10, 2009. Furthermore, the Board finds that the Office properly determined that appellant abandoned his request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the June 9 and January 15, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board