United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket Nos. 14-1350 & 14-1974**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Savannah, GA, Employer	)	**Issued: October 29, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 5, 2013 and May 28, 2014 appellant filed timely appeals from an October 22, 2013 nonmerit decision and an April 3, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues in this case are: (1) whether OWCP properly determined that appellant abandoned her request for a hearing; and (2) whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on November 7, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that she did not receive any correspondence concerning a telephonic hearing and that eyewitness testimony was not taken into account on the initial adjudication of her claim.

FACTUAL HISTORY

On March 2, 2013 appellant, then a 50-year-old postal support employee, filed a traumatic injury claim alleging that on November 5, 2012 she sustained an injury to her right elbow when she hit her elbow on an iron bin after pulling mail out of a slot. She provided a witness statement in support of her claim, who recalled that "on the night in question" she showed him a bruise on her right arm that she had received while sweeping mail from a barcode sorter machine. The employing establishment controverted appellant's claim, contending that she was not on duty at the time of the incident and that she had not provided an objective, well-reasoned medical rationale demonstrating that her condition was causally related to factors of her employment.

On February 17, 2013 Dr. Thom Decker, a Board-certified radiologist, examined x-rays of appellant's right elbow. He noted no fracture, dislocation or other significant osseous abnormality and stated his assessment of a normal right elbow.

In a statement dated March 12, 2013, Lisa A. Syse, a supervisor at the employing establishment, noted that appellant alleged that she notified a supervisor, Ardis Pickett, of the incident immediately after it occurred. She stated that it was the policy of the employing establishment that reported incidents be entered into "EHS" immediately and "Safety" notified within 24 hours. Ms. Syse noted that Mr. Pickett had retired on December 31, 2012 and that appellant had not notified any other supervisor about the incident. She stated that "clock rings" confirmed that appellant was not on duty on the date of the alleged work-related incident.

In a letter dated March 14, 2013, OWCP advised appellant that she had not submitted sufficient evidence to establish that she actually experienced the incident alleged to have caused injury. Further, that appellant had been diagnosed by a physician with a condition related to the alleged injury, that she was within the performance of duty or that a physician had provided an opinion as to how her injury resulted in the condition diagnosed. OWCP requested additional factual evidence. It afforded appellant 30 days to submit this additional evidence. No response was received.

By decision dated April 23, 2013, OWCP denied appellant's claim. It found insufficient factual evidence to establish that the November 5, 2012 incident occurred as alleged, explaining that the employing establishment had indicated that she was not at work on November 5, 2012.

By letter dated April 14, 2013, received by OWCP on April 25, 2013, appellant responded to OWCP's inquiries. She stated that, beginning the week of November 3, 2012, she worked at the employing establishment's processing and distribution center, sweeping the mail in an automation area. As appellant swept the mail, she reached up to pull mail out of a slot, brought her right arm down and hit her elbow on an iron bin. She stated that afterward her right elbow hurt badly because she had hit a bone. Appellant noted that she immediately told Vernon B. Williams that she had hit her arm and that it hurt. Mr. Williams told her to inform a

supervisor. Appellant stated that she told Mr. Pickett about the incident, who asked if she was all right. She responded that it hurt, but that it was probably just bruised. Appellant stated that she had no similar conditions prior to the date of injury and did not sustain any other injury between this date and the date it was first reported to a supervisor. She attached another statement from Mr. Williams, which noted that she had shown him a bruise on her arm that she had received while working as a postal employee "on the night in question."

In a diagnostic report dated April 17, 2013, Dr. Matthew Dixon, a Board-certified radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's right elbow. He stated his impression of a small partial tear of the extensor carpi radialis brevis tendon origin, with no other significant findings. Appellant also submitted unsigned discharge notes dated February 17, 2013.

In a duty status report dated April 20, 2013, Dr. Michael Adams, a Board-certified surgeon, recommended work restrictions for appellant of no more than 5 pounds of continuous or 10 pounds of intermittent lifting; no continuous sitting; no continuous standing; no continuous walking; no more than one to two hours of kneeling per day; no more than four to six hours of bending/stooping per day; no more than one to two hours of twisting per day; no more than two to eight hours of pushing/pulling per day; no continuous simple grasping; no more than two to six hours of fine manipulation per day; and no more than two to four hours of reaching above the shoulder per day. He noted that she had a tear of the extensor carpi brevis tendon and under the heading of "diagnosis due to injury," he wrote "contusion" and "tear of extensor carpi brevis." Dr. Adams advised appellant to return to work on April 20, 2013. A supervisor noted that her injury occurred when her right elbow slammed into a steel shelf and listed appellant's date of birth under the heading "date of injury."

On April 30, 2013 appellant requested a telephonic hearing before an OWCP hearing representative. In an attached statement dated April 26, 2013, she noted that, while she injured her right elbow the week of November 3, 2013, she was not sure of the exact date. Appellant stated that she did report it to her supervisor, Mr. Pickett and that she told him she thought it was just bruised at that time. She explained that her "paperwork was receive[d] late due to" her physicians waiting for an MRI scan to be delivered.

OWCP informed appellant that the hearing would be held on September 23, 2013 and provided the, time, telephone number and passcode for the telephonic hearing. This notice was sent to her last known address by letter dated August 7, 2013.

By decision dated October 22, 2013, OWCP determined that appellant had abandoned her request for a hearing because she had failed to appear and had not explained her absence.

By letter dated October 30, 2013 and received by the Board on November 5, 2013, appellant appealed OWCP's decision of October 22, 2013, contending that she never received a letter informing her of her hearing.[2]

[2] This appeal was docketed under case number 14-1974 on September 12, 2014.

Appellant requested reconsideration of OWCP's April 23, 2013 decision by form letter dated November 5, 2013 and received by OWCP on December 2, 2013. She attached a narrative statement dated November 15, 2013, in which she noted that she did not know the exact date of her injury, but that it was during the week of November 3, 2012. Appellant's description of the incident and of informing her supervisor was consistent with her prior accounts. She stated that, afterward, her elbow hurt every day and that it continued to hurt months later. In February 2013, appellant went to the emergency room, where x-rays were taken and she was told to see her regular physician. She noted that she saw Dr. Adams, who sent her for more x-rays and scheduled another appointment. Appellant also attached another statement from Mr. Williams dated November 14, 2013. Mr. Williams stated that the week of November 3, 2012 she showed him a bruise on her arm that she received while working at the employing establishment. He told her to notify her supervisor, which she did. Mr. Williams noted that, in the following days, appellant told him that her arm was still in pain and that it was worse when she attempted to lift objects.

By decision dated January 3, 2014, OWCP reviewed the merits of appellant's case on reconsideration, but did not modify its prior decision. It found that she had not provided an exact date for her injury.

Appellant again requested reconsideration by form letter dated January 23, 2014 and received on January 29, 2014. With her request, she attached a statement in which she noted that she had made a mistake regarding her date of injury. Appellant stated that she had thought November 5, 2012 was a Thursday, but that in fact November 7, 2012 was a Thursday and that the latter date was the date she was injured at work. She explained that she was in so much pain, she did not think about it again.

In another duty status report dated April 20, 2013, Dr. Adams reiterated his previous work restrictions for appellant. He listed her diagnosis as sprains and strains of the elbow and forearm. A supervisor noted that appellant's date of injury was November 7, 2012 and that her injury occurred when her right elbow slammed into a steel shelf while working.

In a statement dated December 28, 2013, Mr. Pickett stated that, on November 7, 2012, appellant came to him after she hit her right elbow on a steel bin while sweeping mail. Appellant mentioned that it hurt, but assumed that it could be a bruise. Afterward, she mentioned to Mr. Pickett that it still gave her discomfort and attributed this discomfort to continuous lifting. Mr. Pickett noted that there was no official report, but that it was brought to his attention at the time it occurred. He stated that it was feasible that appellant's injury could have been worse than she expected.

By decision dated April 3, 2014, OWCP reviewed the merits of appellant's claim and modified its decision to accept that the incident of November 7, 2013 occurred as alleged, but denied her claim on the basis that she had not established a causal relationship between her diagnosis and the traumatic incident. It noted that the medical evidence from Dr. Adams provided a diagnosis, but did not elaborate on how the incident of November 7, 2012 caused this diagnosis.

LEGAL PRECEDENT -- ISSUE 1

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.[3] Unless otherwise directed in writing by the claimant, OWCP's 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.[4] OWCP has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.[5]

The authority governing abandonment of hearings rests with OWCP's regulations, which provide in pertinent part as follows:

> "A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days or the failure of the claimant to appear at the second scheduled hearing without good cause shown shall constitute abandonment of the request for a hearing."[6]

ANALYSIS -- ISSUE 1

By decision dated April 23, 2013, OWCP denied appellant's claim for compensation for a traumatic injury. Appellant made a timely request for an oral hearing and, by notice dated August 7, 2013, OWCP advised her that a telephonic oral hearing was to be held on September 23, 2013. OWCP provided a telephone number, a time and a passcode. The notice was sent to appellant's last known address.[7]

Appellant failed to call the designated number on September 23, 2013. Thus, she was required to provide an explanation for her failure to appear within 10 days. There is no evidence of record that appellant contacted OWCP within 10 days of September 23, 2013 to explain her failure to call in for the scheduled hearing. The evidence establishes that she did not request a postponement of the hearing. Therefore, the Board finds that appellant abandoned her request for a hearing in this case.

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[3] 20 C.F.R. § 10.616(a).

[4] *Id.* at 10.617(b).

[5] *See also K.D.*, Docket No. 11-77 (issued August 18, 2011); *see Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

[6] 20 C.F.R. § 10.622(f); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

[7] Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. *See also K.R.*, Docket No. 13-1412 (issued December 11, 2013); *see James A. Gray*, 54 ECAB 277 (2002).

On appeal, appellant contends that she never received notice of the hearing. The Board notes that the August 7, 2013 notice of hearing was properly addressed and mailed to appellant at her last known address. A notice properly addressed and duly mailed to an individual in the ordinary course of business is presumed to have been received by that individual.[8] Accordingly, the Board finds that appellant was properly notified of the hearing.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[9] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[10] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[11]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.[12] 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.[13] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[14]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[15] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[16]

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[8] *J.R.*, Docket No. 13-313 (issued August 15, 2013); *see also Newton D. Lashmett*, 45 ECAB 181 (1993) (regarding the mailbox rule).

[9] *See supra* note 1.

[10] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[11] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[12] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 10 at n.5.

[13] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

[14] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 10 at n.5.

[15] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[16] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[17] 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 compensable employment factors.[18] 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.[19]

ANALYSIS -- ISSUE 2

Appellant alleged that on November 7, 2012, she sustained an injury to her right elbow after pulling mail out of a slot and hitting her elbow on an iron bin. By decision dated April 3, 2014, OWCP accepted that the November 7, 2012 incident occurred as alleged, but denied her claim, finding insufficient medical evidence to establish that her right elbow condition was causally related to the accepted incident. The Board finds that appellant did not meet her burden of proof to establish that her right elbow condition was a result of the November 7, 2012 employment incident.

Appellant submitted duty status reports signed by Dr. Adams, containing diagnoses of contusion, tear of the extensor carpi brevis tendon and sprains and strains of the elbow and forearm. Although Dr. Adams stated that the history of injury on the duty status reports corresponded to that, given to him by her and listed diagnoses due to an injury, he did not provide any opinion of reasonable medical certainty on the cause of her right elbow condition, supported by detailed medical rationale, explaining the nature of the relationship between her diagnosed conditions and the incident of November 7, 2012. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[20] The diagnostic report of Dr. Dixon is also insufficient to establish appellant's claim, as it did not provide any opinion on the cause of her right elbow condition.

The issue of causal relationship is a medical question that must be established by the submission of a probative medical opinion from a physician.[21] Because appellant has not provided such medical evidence, the Board finds that she has not met her burden of proof to establish her claim.

[17] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[18] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[19] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[20] *Willie M. Miller*, 53 ECAB 697, 701 (2002).

[21] *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

On appeal, appellant contends that witness statements were not taken into consideration on the initial adjudication of her claim. This argument is irrelevant to the issue on appeal of the April 3, 2014 decision, as OWCP had accepted the incident but denied her claim on the basis that she had not provided sufficient medical evidence to establish that the accepted November 7, 2014 employment incident caused or contributed to her diagnosed conditions. Such evidence was likely relied upon in the conclusion appellant had sufficiently proven fact of injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned her request for a hearing. The Board further finds that she did not meet her burden of proof to establish a right elbow injury causally related to a November 7, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2014 and October 22, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 29, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board