



and (2) whether OWCP properly determined that she abandoned her request for an oral hearing before an OWCP hearing representative.

### **FACTUAL HISTORY**

On August 22, 2013 appellant, then a 47-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2013, while at work, she injured her left knee when she fell on a step. She did not stop work. OWCP accepted the claim for a left knee contusion.<sup>3</sup>

X-rays of the left knee obtained on August 13, 2013 revealed severe degenerative arthritis and a small synovial suprapatellar calcification. Appellant received periodic treatment for her left knee from 2013 to 2016.

In a report dated May 24, 2017, Dr. Ankur M. Chhadia, a Board-certified orthopedic surgeon, noted that appellant had experienced left knee pain for 10 years. He obtained a history of her working 28 years as a letter carrier, described her work duties, and noted that her left knee pain increased “with time and work.” Dr. Chhadia noted that appellant related that she was injured at work in 1999 and had surgery in 2000, but her left knee failed to fully recover. He diagnosed osteoarthritis of the left knee post meniscectomy and recommended physical therapy. Dr. Chhadia advised that she could perform her usual work duties. In a May 24, 2017 work duty status form, he confirmed that appellant could return to work without restrictions. However, Dr. Chhadia submitted a work duty status form dated June 14, 2017 in which he noted that she was medically unable to work and should return in four weeks.

Appellant, on August 1, 2017, filed a notice of recurrence (Form CA-2a) on June 14, 2017 claiming disability causally related to her August 6, 2013 employment injury. She asserted that she had experienced continued pain since August 2013. Appellant related that after returning to work it was “difficult to walk with the continued work requirement and long hours on [the] feet and joints without cartilage pain and rubbing of [the] joints....”

OWCP, in an August 15, 2017 development letter, informed appellant of the definition of a recurrence of disability and requested that she submit additional factual information, including a description of the circumstances surrounding the alleged recurrence of disability and why she attributed her disability to her prior injury. It further requested that she submit medical evidence showing that she sustained increased disability due to her accepted employment injury. OWCP noted that, following her injury, appellant resumed her usual employment on August 9, 2013.

In a response to OWCP’s request for additional information regarding his recommendation for physical therapy, on August 16, 2017 Dr. Chhadia related that appellant required the therapy for left knee osteoarthritis after a meniscectomy. In response to OWCP’s request that he list additional diagnoses that should be added to the claim, he indicated that the diagnosed condition was left knee osteoarthritis.

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<sup>3</sup> In a decision dated February 18, 2015, OWCP denied appellant’s claim for a schedule award as she had not submitted an impairment evaluation demonstrating that she sustained a permanent impairment due to her accepted work injury.

By decision dated September 25, 2017, OWCP found that appellant had not established a recurrence of disability causally related to her accepted employment injury. It noted that she had not provided additional factual information as requested on August 15, 2017 or submitted medical evidence supporting that she sustained an increase in disability due to her August 6, 2013 employment injury.

Appellant, in a form postmarked October 2, 2017, requested an oral hearing before an OWCP hearing representative. On November 16, 2017 OWCP advised her that it had scheduled a telephone hearing for December 20, 2017 at 2:30 p.m. Eastern Time (ET). It mailed the notice to appellant's address of record and provided her with a toll free number to call, as well as the appropriate passcode. Appellant did not, however, telephone for the hearing at the appointed time, or contact OWCP within 10 days thereafter.

By decision dated January 2, 2018, an OWCP hearing representative determined that appellant had abandoned her request for a telephone hearing. He found that she had received written notice of the telephone hearing 30 days before the scheduled hearing, but that she had failed to attend the hearing or contact OWCP either before or after the scheduled hearing to explain her absence.

On appeal appellant contends that she did not receive notification of the hearing scheduled for December 20, 2017. She also argues that she requires additional medical treatment for her condition.

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

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>4</sup>

OWCP procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>5</sup>

OWCP's procedures provide that, when a claimant has returned to full duty for more than 90 days after an injury, he or she must submit factual evidence describing the changes in his or her condition and any change in work duties, and a description of any intervening injuries and subsequent medical treatment.<sup>6</sup>

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2(c)(5) (June 2013); *see also* G.B., Docket No. 15-1319 (issued December 8, 2015).

<sup>6</sup> *Id.* at Chapter 2.1500.6(b)(2) (June 2013).

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence a causal relationship between his or her recurrence of disability and his employment injury.<sup>7</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>8</sup>

### ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left knee contusion on August 6, 2013. Appellant resumed her usual work duties effective August 9, 2013. She stopped work on June 14, 2017 and, on August 1, 2017, filed a notice of recurrence of disability.

The Board finds that appellant did not submit sufficient evidence to establish a recurrence of disability on or after June 1, 2017 due to her accepted August 6, 2013 employment injury. Appellant did not, as requested by OWCP, submit a detailed statement describing the alleged recurrence of disability and why she attributed her current condition to her accepted employment injury.<sup>9</sup> Additionally, she failed to provide reasoned medical evidence establishing that the claimed recurrence of disability beginning June 14, 2017 was causally related to the accepted employment injury.<sup>10</sup>

In reports dated May 24 and June 14, 2017, Dr. Chhadia described appellant's work history and her complaints of left knee pain for the past 10 years that increased over time and with the performance of her employment. He noted that she had a history of a left knee injury in 1999 and surgery in 2000 without a complete resolution of symptoms. Dr. Chhadia diagnosed osteoarthritis of the left knee postmeniscectomy. He advised that she could perform her usual work duties. However, in May 24 and June 14, 2017 work duty status forms, Dr. Chhadia opined that appellant was disabled from work. He did not, however, reference the August 6, 2013 employment injury, attribute any increased disability to that injury, or otherwise address causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>11</sup>

Dr. Chhadia, on August 16, 2017, diagnosed left knee osteoarthritis after a meniscectomy and recommended continued physical therapy. He did not address disability, and thus his opinion

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<sup>7</sup> *Carmen Gould*, 50 ECAB 504 (1999).

<sup>8</sup> *See A.W.*, Docket No. 17-0638 (issued August 29, 2017); *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>9</sup> *See supra* note 6. The Board notes that, if new work factors or exposure are alleged, this would constitute a new injury even if it involves the same part of the body previously injured. *See N.W.*, Docket No. 17-1415 (issued November 7, 2017).

<sup>10</sup> *See D.L.*, Docket No. 13-1653 (issued November 22, 2013).

<sup>11</sup> *See D.K.*, Docket No. 17-1549 (issued July 6, 2018).

is of diminished probative value.<sup>12</sup> Further, OWCP accepted only a left knee contusion as causally related to the August 6, 2013 employment injury. Appellant has the burden of proof to establish that the left knee osteoarthritis is causally related to the employment injury through the submission of rationalized medical evidence.<sup>13</sup> Dr. Chhadia provided that left knee osteoarthritis was an additional diagnosis that should be added to the claim, but did not provide any rationale for his opinion. Medical conclusions unsupported by rationale are of diminished probative value regarding causal relationship.<sup>14</sup>

On appeal appellant asserts that she requires continued medical treatment for her condition. She has not submitted sufficient medical evidence, however, to establish that she has continued disability or the need for medical treatment as a result of her accepted left knee contusion, and thus has not met her burden of proof.<sup>15</sup>

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 and 20 C.F.R. §§ 10.605 through 10.607.

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

Under FECA and its implementing regulations, a claimant who has received a final adverse decision from OWCP may obtain a hearing by writing the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>16</sup> 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.<sup>17</sup> OWCP has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.<sup>18</sup>

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.<sup>19</sup> With respect to abandonment of hearing requests, Chapter

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<sup>12</sup> See *C.H.*, Docket No. 17-1239 (issued November 20, 2017) (the Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific date of disability for which compensation is claimed).

<sup>13</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>14</sup> See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>15</sup> See *L.R.*, Docket No. 16-0520 (issued June 13, 2016).

<sup>16</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>17</sup> *Id.* at § 10.617(b). OWCP procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.1601.6(b) (October 2011).

<sup>18</sup> See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991); see also *K.D.*, Docket No. 11-0077 (issued August 18, 2011).

<sup>19</sup> *Claudia J. Whitten*, 52 ECAB 483 (2001).

2.1601(g) of OWCP's procedures<sup>20</sup> and section 10.622(f) of its regulations<sup>21</sup> provide in relevant part that failure of the claimant to appear at the scheduled hearing, failure to request a postponement, and failure to request in writing within 10 days after the date set for the hearing that another hearing be scheduled shall constitute abandonment of the request for a 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>22</sup>

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

The Board finds that OWCP properly determined that appellant abandoned her request for a telephone hearing before an OWCP hearing representative.

OWCP, by decision dated September 25, 2017, found that appellant had not established an employment-related recurrence of disability. Appellant requested an oral hearing in a letter postmarked October 2, 2017. By letter dated November 16, 2017, OWCP's Branch of Hearings and Review informed appellant that it had scheduled a telephone hearing for December 20, 2017 at 2:30 p.m. ET.

Appellant did not appear by telephone for the December 20, 2017 scheduled hearing, and there is no indication that she requested postponement of the hearing.<sup>23</sup> Moreover, she did not submit a written request within the 10-day period following the scheduled hearing explaining her absence and requesting that another hearing be scheduled.<sup>24</sup> The regulations provide that where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>25</sup>

On appeal appellant asserts that she did not receive notice of the scheduled telephone hearing. The record, however, supports that OWCP's November 16, 2017 letter scheduling the telephone hearing was sent to her at her address of record and there is no indication that it was returned as undeliverable. Under the mailbox rule, it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>26</sup> The current record is devoid of evidence to rebut the presumption that appellant received the November 16, 2017 notice of hearing.<sup>27</sup>

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<sup>20</sup> Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.1601.6(g) (October 2011).

<sup>21</sup> 20 C.F.R. § 10.622(f).

<sup>22</sup> *See supra* note 20.

<sup>23</sup> *See* 20 C.F.R. § 10.622(c).

<sup>24</sup> *Id.* at § 10.622(f).

<sup>25</sup> *Id.*; *see also* C.M., Docket No. 16-0412 (issued September 25, 2017).

<sup>26</sup> *See* A.C. Clyburn, 47 ECAB 153 (1995).

<sup>27</sup> *See* C.M., *supra* note 25.

Appellant failed to request a postponement of the scheduled hearing, did not appear at the scheduled hearing, and did not provide any written explanation for her absence within the 10-day period following the scheduled hearing. OWCP, therefore, properly found that she abandoned her request for an oral hearing.<sup>28</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability beginning June 14, 2017 causally related to her August 6, 2013 employment injury. The Board further finds that OWCP properly determined that she abandoned her request for a telephone hearing before an OWCP hearing representative.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 2, 2018 and September 25, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 27, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>28</sup> See *P.M.*, Docket No. 17-1958 (issued May 17, 2018).