

**United States Department of Labor
Employees' Compensation Appeals Board**

E.V., Appellant)	
)	
and)	Docket No. 19-0447
)	Issued: June 25, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Redlands, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 20, 2018 appellant filed a timely appeal from a July 2, 2018 merit decision and a November 27, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 27, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish an injury in the performance of duty, as alleged; and (2) whether OWCP properly determined that appellant abandoned his request for a telephonic hearing.

FACTUAL HISTORY

On April 27, 2018 appellant, then a 28-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that on April 27, 2018 he developed a rash on the upper portion of his body, back of head, and neck while in the performance of duty. He notified his supervisor, stopped work, and sought medical treatment that day.

In a letter dated April 27, 2018, the employing establishment controverted the claim. It argued that appellant had not reported a bite (insect, animal, etc.) or contact with an allergen prior to development of the rash. As such, it was unclear what had caused his allergic dermatitis and; therefore, the claim should be denied.

In a development letter dated May 2, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Following the May 2, 2018 development letter, appellant submitted medical reports dated April 27 through May 2, 2018 documenting treatment for allergic dermatitis. In an April 27, 2018 medical report, Dr. Keith Wresch, a treating physician specializing in emergency medicine, reported that appellant was delivering mail when he developed itching symptoms, but he did not know how this occurred.

By decision dated July 2, 2018, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the occupational exposure occurred as alleged. It noted that appellant had not responded to the questionnaire provided with its May 2, 2018 development letter.

On July 12, 2018 appellant requested a telephonic hearing before an OWCP hearing representative.

By letter dated September 27, 2018, OWCP's hearing representative notified appellant that the Branch of Hearings and Review had scheduled a telephonic hearing for November 14, 2018 at 3:00 p.m. Eastern Standard Time (EST). The hearing notice was mailed to appellant's address of record and he was provided with a toll-free number to call and the appropriate passcode.

By decision dated November 27, 2018, OWCP's hearing representative determined that appellant had abandoned his request for a telephonic hearing. He found that appellant had received written notification of the November 14, 2018 hearing 30 days in advance, but failed to appear. The hearing representative further determined that the record was devoid of evidence that established that he had contacted, or attempted to contact, OWCP either prior to or subsequent to the scheduled hearing to explain his failure to participate. He concluded that appellant had abandoned his hearing request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish 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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty, as alleged.

The Board finds that appellant has not established the factual component of his claim as he failed to describe the circumstances surrounding the occupational factors, which he believed caused or contributed to his skin condition. To establish a claim for compensation in an occupational disease claim, an employee must submit a statement, which identifies the factors of

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

employment believed to have caused his or her condition.⁸ Appellant has not provided factual information to establish that an occupational exposure occurred as alleged.⁹

In a development letter dated May 2, 2018, OWCP requested that appellant respond to its questionnaire and provide detailed information concerning the occupational factors he believed contributed to his condition. However, appellant failed to respond or otherwise provide a detailed narrative statement describing the employment factors, which he believed contributed to his condition.¹⁰ The only statement provided was the generalized and vague statement on his Form CA-2, which stated that he developed a rash on April 27, 2018.

As appellant has not described the employment factors alleged to have caused his injury, the Board finds that he has not met his burden of proof to establish an injury in the performance of duty, as alleged. As such, the medical evidence need not be addressed.¹¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) 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 by OWCP 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.¹² Unless otherwise directed in writing by the claims examiner, an OWCP 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.¹³ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.¹⁴

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.¹⁵ With respect to abandonment of hearing requests, Chapter

⁸ *D.M.*, Docket No. 18-0335 (issued June 18, 2018).

⁹ *Id.*

¹⁰ *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

¹¹ *See V.F.*, 58 ECAB 321, 327 (2007); *see also Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006). Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary.

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

¹³ 20 C.F.R. § 10.617(b).

¹⁴ *W.H.*, Docket No. 18-0369 (issued November 29, 2018). *See also Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹⁵ *Claudia J. Whitten*, 52 ECAB 483 (2001).

2.1601.6(g) of OWCP's procedures¹⁶ and section 10.622(f) of its regulations¹⁷ 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.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing before an OWCP hearing representative.¹⁹

Following OWCP's July 2, 2018 decision denying his occupational disease claim, appellant filed a timely request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. By letter dated September 27, 2018, a hearing representative notified appellant that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for November 14, 2018 at 3:00 p.m. (EST). OWCP properly mailed the hearing notice to appellant's last known address.²⁰ Appellant failed to call in for the scheduled hearing using the provided telephone number. He also did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.²¹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty, as alleged. The Board further finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing before an OWCP hearing representative.

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

¹⁷ 20 C.F.R. § 10.622(f).

¹⁸ *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁹ *M.R.*, Docket No. 18-1643 (issued March 1, 2019).

²⁰ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018). Appellant did not submit evidence of nondelivery of OWCP's September 27, 2018 hearing notice such that the presumption of receipt would be rebutted.

²¹ *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 27 and July 2, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 25, 2019
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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