



(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish an injury causally related to the accepted November 2, 2018 employment incident; and (2) whether OWCP properly determined that appellant had abandoned his request for an oral hearing before an OWCP hearing representative.

### **FACTUAL HISTORY**

On November 20, 2018 appellant, then a 49-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on November 2, 2018 he was involved in a work-related motor vehicle accident (MVA) and sustained injuries to his right hand, neck, and head while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that he was in the performance of duty at the time of the claimed incident.

In a November 27, 2018 development letter, OWCP advised appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence necessary to establish entitlement to FECA benefits. It noted that no firm diagnosis of a work-related condition had been provided by a physician. OWCP also asked appellant to complete a questionnaire to provide further details regarding the circumstances of the claimed November 2, 2018 employment injury. It afforded him 30 days to submit the necessary evidence.

OWCP did not receive additional evidence.

By decision dated January 3, 2019, OWCP accepted that the November 2, 2018 employment incident occurred as alleged, but denied appellant's traumatic injury claim because the evidence of record did not include medical evidence containing a diagnosis in connection with the accepted employment incident. As such, it found that he had not established the medical component of fact of injury.

On January 30, 2019 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.

On February 19, 2019 OWCP received additional factual information and medical documentation, which included: a November 2, 2018 employing establishment motor vehicle

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<sup>3</sup> The Board notes that following the June 4, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the 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.*

accident report; a similarly dated Ohio traffic crash report; November 2, 2018 emergency department treatment records; and November 5, 2018 work restrictions report.<sup>4</sup>

OWCP also received a statement from appellant dated January 30, 2019. Appellant explained that on November 2, 2018 he was preparing to make a right turn when an oncoming vehicle made a left turn in front of him. Due to weather conditions, he was unable to avoid colliding with the right side of the oncoming vehicle. Appellant experienced pain and swelling in his sternum and chest, a bruise on his forehead, and what felt like a broken wrist. He further indicated that, after returning his work vehicle to the employing establishment garage, he immediately sought medical treatment at the employing establishment's emergency department. Appellant stated that he had no similar symptoms prior to this injury.

In an April 19, 2019 letter, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for May 21, 2019 at 10:00 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and the appropriate passcode. The hearing representative mailed the notice to appellant's last known address of record.

By decision dated June 4, 2019, OWCP's hearing representative determined that appellant abandoned his request for an oral hearing. He indicated that appellant had received 30-day advance written notice of the hearing scheduled for May 21, 2019, and that he failed to appear. The hearing representative further noted that there was no indication in the record that appellant contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear. Consequently, appellant was deemed to have abandoned his request for an oral hearing.

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

An employee seeking benefits under FECA<sup>5</sup> 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 of FECA,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>4</sup> Appellant received a provisional diagnosis of unspecified injury of the right wrist, hand, and finger(s). He was restricted from performing any heavy lifting with the right arm/wrist, but was able to perform his driving duties.

<sup>5</sup> *Id.*

<sup>6</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>8</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>9</sup> Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>10</sup> The second component is whether the employment incident caused a personal injury.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.<sup>13</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment incident.<sup>14</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted November 2, 2018 employment incident.

When appellant filed his Form CA-1 on November 20, 2018, he did not provide medical evidence with respect to his claimed head, neck, and right hand injuries. On November 27, 2018 OWCP advised him of the deficiencies in his claim and afforded him 30 days to submit the requested factual and medical evidence. However, appellant did not respond. OWCP subsequently accepted that the November 2, 2018 employment-related MVA occurred as alleged, but denied appellant's traumatic injury claim because the record was devoid of medical evidence demonstrating a diagnosis in connection with the accepted employment incident. As noted, fact of injury consists of two components.<sup>15</sup> In this instance, appellant failed to timely submit medical evidence to establish that the employment incident caused a personal injury.<sup>16</sup> Accordingly, the Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted November 2, 2018 employment incident.

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<sup>9</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>10</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> *E.M.*, *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>14</sup> *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>15</sup> *See supra* note 11.

<sup>16</sup> While OWCP subsequently received additional evidence, the Board's review is limited to the evidence of record at the time OWCP issued its January 3, 2019 final decision. 20 C.F.R. § 501.2(c)(1). For review of new evidence appellant should file a request for reconsideration with OWCP.

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.

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

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.<sup>17</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>18</sup> OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>19</sup>

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.<sup>20</sup>

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

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

Following OWCP's January 3, 2019 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an April 19, 2019 letter, OWCP's hearing representative notified him that a telephonic hearing was scheduled for May 21, 2019 at 10:00 a.m. EST and properly mailed the hearing notice to appellant's last known address of record.<sup>21</sup> Appellant failed to participate in the scheduled hearing. He also did not request a postponement or provide an explanation to OWCP for his failure to participate in the

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<sup>17</sup> 20 C.F.R. § 10.616(a).

<sup>18</sup> *Id.* at § 10.617(b).

<sup>19</sup> *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>20</sup> 20 C.F.R. § 10.622(f); FECA Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also R.S.*, Docket No. 15-1358 (issued December 4, 2015).

<sup>21</sup> 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 April 19, 2019 hearing notice such that the presumption of receipt would be rebutted.

hearing within 10 days of the scheduled hearing.<sup>22</sup> Thus, the Board finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.<sup>23</sup>

On appeal appellant's representative explained that the reason he was unable to participate in the May 21, 2019 telephonic hearing was because his mother had been hospitalized on May 9, 2019. As noted above, appellant received proper notice of the scheduled hearing and did not timely request a postponement of the hearing or provide the basis for his failure to participate as was required. Thus, the Board finds that appellant abandoned his request for an oral hearing.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an injury causally related to accepted November 2, 2018 employment incident. The Board further finds that OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 4 and January 3, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 13, 2020  
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

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<sup>22</sup> *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

<sup>23</sup> *R.S.*, *supra* note 20.