

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

_____)	
G.J., Appellant)	
)	
and)	Docket No. 21-0528
)	Issued: February 1, 2022
U.S. POSTAL SERVICE, ATHENS MAIN POST OFFICE, Athens, GA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 20, 2021 appellant filed a timely appeal from a September 25, 2020 merit decision and a January 25, 2021 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 the case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted June 25, 2020 employment incident; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 25, 2021 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.*

(2) whether OWCP properly determined that appellant had abandoned her request for an oral hearing.

FACTUAL HISTORY

On August 6, 2020 appellant then a 54-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on June 25, 2020 a customer threw packages at her, which scratched her right arm and caused her right shoulder and neck to become swollen. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty.

Appellant submitted a statement which explained that on June 25, 2020 a customer attempted to drop off prepaid parcels, and when she asked the customer if she had a scan sheet, the customer became aggressive and threw parcels at appellant's right arm. She noted that her arm was painful and scratched.

OWCP received an undated e-mail from appellant's supervisor, S.J, who stated that on June 25, 2020 a coworker informed her that a customer had thrown prepaid parcels at appellant, with one parcel striking appellant's right forearm. S.J. related that she examined appellant's arm, but did not see any bruises or scratches.

OWCP received an accident report dated June 26, 2020 from the employing establishment, which recounted that on June 25, 2020 a customer threw parcels at appellant.

OWCP received the first page of a June 26, 2020 report from Dr. Patrick B. Eagleson, an emergency medicine specialist, noting that appellant was seen that day in a hospital emergency department.

In a development letter dated August 24, 2020, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed, including a medical report from a qualified physician providing a medical explanation as to how the reported work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

On September 2, 2020 OWCP received hospital records from a June 26, 2020 emergency department visit, including diagnostic studies and a June 30, 2020 report of Dr. Eagleson. Dr. Eagleson noted that appellant complained of right shoulder and right upper back pain after a customer threw boxes at her the previous day. He indicated that an x-ray had been taken of her right shoulder, which was negative, and diagnosed right shoulder and right upper back pain.

On September 5, 2020 OWCP received both pages of Dr. Eagleson's June 26, 2020 emergency department report, which noted the prescribed medications.

By decision dated September 25, 2020, OWCP accepted that the June 25, 2020 employment incident occurred, as alleged, but denied appellant's claim, finding that she had not submitted medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 4, 2020 appellant timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By notice dated December 7, 2020, OWCP's hearing representative informed appellant of the time and location of her oral hearing scheduled for January 11, 2021 at 8:00 a.m. Eastern Standard Time (EST). It mailed the notice to appellant's last known address of record and provided instructions on how to participate. Appellant did not appear for the hearing or request postponement of the hearing.

Appellant resubmitted medical reports previously of record. OWCP also received a police report dated June 25, 2020.

By decision dated January 25, 2021, OWCP found that appellant had failed to appear at the oral hearing and had, therefore, abandoned her request. It indicated that she received 30 days advanced notice of the hearing scheduled for January 11, 2021 and found that there was no evidence that she had contacted OWCP either prior to or subsequent to the scheduled hearing to request a postponement or explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ 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.⁵ 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.⁶

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. There are two components involved in establishing fact of injury. The first component to be established is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 specific employment factors identified by the employee.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 25, 2020 employment incident.

Appellant submitted a report dated June 26, 2020 from Dr. Eagleson, which related that she was seen in the 'hospital emergency department that day for right shoulder pain and upper back pain. OWCP received reports by Dr. Eagleson relating to appellant's treatment at the hospital emergency department on June 26, 2020. These reports noted that an x-ray of appellant's right shoulder was negative and appellant's discharge diagnoses were right shoulder and right upper back pain. The Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.¹⁰ Dr. Eagleson did not provide an opinion on causal relationship. The Board has held that a medical report is of no probative value if it does not offer an opinion as to whether the accepted employment incident caused or aggravated the claimed condition.¹¹

As there is no medical evidence of record establishing a diagnosed medical condition causally related to the accepted employment incident, the Board finds that appellant has not met her burden of proof.

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

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. 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

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *See K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹¹ *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

scheduled date.¹² OWCP has the burden of proving that it mailed notice of the scheduled hearing to a claimant.¹³ Section 10.622(f) of OWCP's regulations provides that 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.¹⁴ 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. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.¹⁵ Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision, finding that the claimant abandoned the request for a hearing.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

The record establishes that on December 7, 2020 in response to appellant's timely request for an oral hearing, a representative of OWCP's Branch of Hearings and Review properly mailed a notice of the scheduled telephonic hearing scheduled for January 11, 2021 at 8:00 a.m. EST. The hearing notice was mailed to appellant's last known address of record and provided instructions on how to participate. Appellant did not call in for the scheduled telephonic hearing. She did not request a postponement or provide an explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.¹⁷

CONCLUSION

The Board finds that OWCP properly determined that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted June 25, 2020 employment incident. The Board also finds that OWCP properly determined that she abandoned her request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

¹² 20 C.F.R. § 10.617(b).

¹³ *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020).

¹⁴ *Supra* note 12 at § 10.622(f).

¹⁵ *Id.*

¹⁶ *T.R.*, *supra* note 13; *A.J.*, Docket No. 18-0830 (issued January 10, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2020 and January 21, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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