

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

_____)		
E.G., Appellant)		
)		
and)		Docket No. 22-0238
)		Issued: June 20, 2023
DEPARTMENT OF HOMELAND SECURITY,)		
U.S. CUSTOMS & BORDER PROTECTION,)		
El Paso, TX, Employer)		
_____)		

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 2, 2021 appellant filed a timely appeal from a June 9, 2021 merit decision and a November 23, 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 this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a medical diagnosis in connection with the accepted April 19, 2021 employment incident; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 23, 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.*

OWCP properly determined that appellant had abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On May 3, 2021 appellant, then a 33-year-old customs and border protection agent, filed a traumatic injury claim (Form CA-1) alleging that on April 19, 2021 his left eye became irritated when he was checking a vehicle while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that he was injured in the performance of duty. Appellant did not stop work.

In a development letter dated May 4, 2021, OWCP advised appellant of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to submit the necessary evidence.

Appellant submitted notes dated May 4 and 12, 2021 from Dr. David J. Baptiste, an optometrist, which excused appellant from work in order to attend a follow up appointment.

By decision dated June 9, 2021, OWCP denied appellant's claim finding that he had not submitted any evidence which established a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 28, 2021 appellant timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received additional medical reports dated May 4 and 12, 2021, from Dr. Baptiste, who diagnosed pingueculitis of the left eye.

In a letter dated October 7, 2021, OWCP notified appellant that a hearing would be held on November 9, 2021 at 2:00 p.m. Eastern Standard Time (EST). It instructed him to call the provided toll-free number shortly before the scheduled hearing time and enter in a pass code when prompted. A copy of the letter was mailed to appellant at his last known address of record. Appellant did not appear for the scheduled hearing.

By decision dated November 23, 2021, OWCP's hearing representative found that appellant had failed to appear at the oral hearing and had abandoned his request. The hearing representative indicated that appellant received a 30-day advance notice of the hearing scheduled for November 9, 2021 and found that there was no evidence that he had contacted OWCP either prior to or subsequent to the scheduled hearing to request a postponement or explain his 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

³ *Supra* note 1.

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 is whether appellant actually experienced the employment incident at the time, 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

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 his burden of proof to establish a medical condition in connection with the accepted April 19, 2021 employment incident.

OWCP received work excuse notes dated May 4 and 12, 2021 wherein Dr. Baptiste excused appellant from work in order to attend a follow up appointment. These notes, however, did not provide a medical diagnosis. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of diminished probative value.¹⁰

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).

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 *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted April 19, 2021 employment incident, the Board finds that appellant has not met his 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 scheduled date.¹¹ OWCP has the burden of proving that it mailed notice of the scheduled hearing to a claimant.¹² 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.¹³ 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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 2

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

The record establishes that, on October 7, 2021 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 November 9, 2021 at 3:45 p.m. EST. The hearing notice was mailed to appellant's last known address of record and provided instructions on how to participate. The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been

¹¹ 20 C.F.R. § 10.617(b).

¹² *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020).

¹³ 20 C.F.R. § 10.622(f).

¹⁴ *Id.*

¹⁵ *T.R.*, *supra* note 12; *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).

received. This is called the mailbox rule.¹⁶ Appellant failed to call-in for the scheduled telephonic hearing. He 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical diagnosis in connection with the accepted April 19, 2021 employment incident. The Board further finds that he abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the November 23 and June 9, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 20, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *T.D.*, Docket No. 22-0705 (issued October 7, 2022); *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020).