

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

S.M., Appellant)	
)	
and)	Docket No. 22-1352
)	Issued: May 19, 2023
U.S. POSTAL SERVICE, BEDFORD PARK)	
POST OFFICE, Bedford Park, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 19, 2022 appellant filed a timely appeal from an April 14, 2022 merit decision and an August 23, 2022 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 her burden of proof to establish a back condition causally related to the accepted August 20, 2021 employment incident; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the August 23, 2022 decision, and on appeal, a appellant submitted 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 abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On March 11, 2022 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2021 she sustained injury to her lower back when she lifted a 50-pound box while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that appellant stopped work on August 20, 2021 and returned to work on August 21, 2021.

On October 30, 2021 appellant was seen in an emergency department by Dr. Vishal Anil Patel, a Board-certified family practice physician, for wrist pain and back pain. Dr. Patel assessed back strain and tenosynovitis of the left wrist. Appellant submitted another emergency department visit with an illegible date. On this visit, she was seen by Dr. Jennifer Behrens, a Board-certified emergency medicine physician, for back pain. Dr. Behrens diagnosed bilateral back pain and muscle spasm. She referred appellant to physical therapy and released appellant to return to work on February 11, 2022.

Appellant submitted a February 23, 2022 physical therapy progress note signed by Tess Marcordes, a certified physical therapist. She related complaints of chronic low back pain. Appellant further indicated that she felt a strain in her back after lifting the 50-pound box at work in August 2021. She also felt frequent spasms in her back with certain movements. Ms. Marcordes diagnosed chronic bilateral low back pain without sciatica and muscle spasm. She assessed that appellant's source of pain was due to muscle spasms in the paraspinals.

On February 28, 2022 appellant was seen by Kevin Wilson, a physician assistant. Appellant related that she was pulling a box off an all-purpose container when she injured her back. She indicated pain in her lower back, left shoulder, and right shoulder and that her condition began on August 20, 2021. Mr. Wilson diagnosed sprain of ligaments of the lumbar spine. In his assessment, he noted that appellant was "doing okay" until she strained her back again recently.

In a development letter dated March 14, 2022, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim and provided a development questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On March 21, 2022 appellant was seen for a follow-up appointment with Mr. Wilson. The note indicated no significant improvement. Appellant's diagnosis was listed as strain of muscle, fascia, and tendon of lower back. Mr. Wilson recommended modified-duty status until April 5, 2022.

By decision dated April 14, 2022, OWCP accepted that the August 20, 2021 employment incident occurred as alleged and that a medical condition was diagnosed in connection with the incident. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted August 20, 2021 employment incident.

On April 6, 2022 appellant was seen by Dr. David J. Fletcher, a Board-certified occupational, public health, and general preventive medicine physician. She related her history of pulling a box off an all-purpose container and injuring her back. Dr. Fletcher diagnosed strain of muscle, fascia, and tendon of lower back. He also placed appellant on modified duty from April 6 to 13, 2022. A duty status report (Form CA-17) of even date by Dr. Fletcher reiterated appellant's injury and indicated a diagnosis of lumbar strain. Appellant was allowed to continue working on modified duty. She also submitted an unsigned medical note that continued her work restrictions.

On April 21, 2022 appellant was seen in an emergency department by Nicholas Holwey, a certified physician assistant, for back pain. Mr. Holwey diagnosed acute exacerbation of chronic low back pain.

Appellant continued to submit physical therapy progress notes with a diagnosis of lumbar strain from Brooks Freiburger, a physical therapist, and Sewon Lee, a physical therapist. She also submitted a progress note from physician assistant, Mr. Wilson, dated April 29, 2022.

On May 14, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On April 29, 2022 appellant was seen for a follow up with Dr. Fletcher. She repeated her diagnosis and work restrictions. A Form CA-17 report of even date by Dr. Fletcher continued appellant's modified-duty status.

Appellant submitted additional physical therapy progress notes. A progress evaluation note dated May 10, 2022 was submitted, as well as a discharge summary dated May 25, 2022.

On May 24, 2022 appellant was seen for a follow up with Dr. Fletcher. Her diagnosis and work restrictions remained the same. A Form CA-17 report of even date by Dr. Fletcher continued appellant's modified-duty status.

In a July 7, 2022 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for August 10, 2022 at 10:00 a.m. Eastern Standard Time (EST). She provided appellant with a toll-free telephone number and appropriate passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant, however, failed to appear for the hearing.

By decision dated August 23, 2022, OWCP found that appellant had abandoned her request for an oral hearing, as she had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to 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 of FECA, that the claim was timely filed within the applicable time limitation of FECA, 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee 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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.⁸ 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 employment injury.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

³ *Id.*

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 *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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 *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).

⁷ *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted August 20, 2021 employment incident.

On October 30, 2021 appellant was seen by Dr. Patel for wrist pain and back pain. Dr. Patel assessed back strain and tenosynovitis of left wrist. However, Dr. Patel did not provide an opinion regarding the causal relationship between the diagnosed conditions and the employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ Therefore, this report is of no probative value and is insufficient to establish appellant's claim.

Appellant was subsequently seen by Dr. Behrens for back pain. Dr. Behrens diagnosed bilateral back pain and muscle spasm. However, she did not provide an opinion causally relating a firm diagnosis to the accepted employment injury.¹² As such, this evidence is also of no probative value and is insufficient to establish appellant's claim.

Appellant also submitted medical notes from physician assistants and physical therapists. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.¹³ These reports are therefore of no probative value and are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between her diagnosed medical conditions and the accepted August 20, 2021 employment incident, the Board finds that she 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 by writing to the address specified in the

¹¹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *E.K.*, Docket No. 22-1130 (issued December 30, 2022).

¹³ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

decision within 30 days of the date of the decision for which a hearing is sought.¹⁴ 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.¹⁵ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹

ANALYSIS -- ISSUE 2

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

Following OWCP's April 14, 2022 decision denying appellant's traumatic injury claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a July 7, 2022 notice, OWCP's hearing representative notified appellant that she had scheduled a telephonic hearing for August 10, 2022 at 10:00 a.m. EST. She mailed the notice to appellant's last known address of record. 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 received. This is called the mailbox rule.²⁰

¹⁴ 20 C.F.R. § 10.616(a).

¹⁵ *Id.* at § 10.617(b).

¹⁶ *W.R.*, Docket No. 22-1016 (issued September 30, 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); *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).

¹⁷ 20 C.F.R. § 10.622(f).

¹⁸ *Id.*

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (February 2022); *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

²⁰ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *L.T.*, Docket No. 20-1539 (issued August 2, 2021).

Appellant failed to call in for the scheduled hearing at the prescribed time. She did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.²¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted August 20, 2021 employment incident. The Board further finds that OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the April 14 and August 23, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 19, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ *Id.*