United States Department of Labor
Employees' Compensation Appeals Board

LISA J. TILLEY, Appellant	)	
and	)	**Docket No. 04-2181**
	)	**Issued: February 22, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

Appearances:
Lisa J. Tilley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 3, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 29, 2003 merit decision denying her claim for a recurrence of disability, and a July 6, 2004 nonmerit decision, finding that she abandoned an oral hearing scheduled before an Office hearing representative. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after August 20, 2003 due to her June 1, 2001 employment injury; and (2) whether the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.

FACTUAL HISTORY

On June 20, 2001 appellant, then a 42-year-old clerk, filed a claim alleging that she sustained injury to her upper extremities on June 1, 2001 when she reached for heavy bundles of

mail. She stopped work on June 1, 2001, returned to work on June 20, 2001 in a light-duty position, and stopped work again shortly thereafter. In October 2001, appellant returned to work in a light-duty position for four hours per day and, in November 2001, for eight hours per day. In December 2001, the Office accepted that appellant sustained an employment-related left wrist strain and left trapezius muscle strain.

Appellant received medical treatment from Robert L. Gardiner, an attending Board-certified orthopedic surgeon. In several reports dated in 2002, Dr. Gardiner provided limited findings on examination and stated that appellant continued to be partially disabled from work. In a report dated October 14, 2002, Dr. Gardiner diagnosed left wrist strain, left shoulder strain and left wrist overuse syndrome and indicated that appellant did not report any pain in her left upper extremity and left shoulder.[1] In reports dated June 3 and August 26, 2002, Dr. Olayinka Ogunro, an attending Board-certified orthopedic surgeon, diagnosed tendinitis of an unspecified portion of the left upper extremity and a possible left scapholunate ligament tear.

On August 29, 2003 appellant filed a claim alleging that she sustained a recurrence of disability on August 20, 2003 due to her June 1, 2001 employment injury. Appellant stated that on August 20, 2003 she experienced pain, numbness and weakness in her left wrist and arm and asserted that a nurse told her to stop keying, lifting and pulling.[2]

Appellant submitted an August 22, 2003 report in which Dr. Gardiner noted that appellant reported experiencing pain and a swelling sensation in both hands when she woke up in the morning, as well as pain in her left shoulder and a knot-like swelling in her left elbow. He diagnosed "exacerbation of tendinitis of left wrist," "overuse syndrome of left wrist," and "exacerbation of left shoulder strain." Under the heading "work status" Dr. Gardiner provided the notation "working" and he recommended that appellant return in two months for another appointment.

By letter dated September 19, 2003, the Office requested that appellant submit additional factual and medical evidence in support of her claim for a recurrence of disability. It informed her that all such evidence should be submitted within 30 days from the date of the letter. No additional evidence was submitted by appellant.

By decision dated October 29, 2003, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to show that she sustained a recurrence of disability on or after August 20, 2003 due to her June 1, 2001 employment injury.

On November 19, 2003 appellant requested an oral hearing before an Office hearing representative. She also submitted several reports of Dr. Gardiner which were produced in 2004.

[1] In 2001 and 2002, Dr. Gardiner also completed numerous forms entitled "Texas Workers' Compensation Work Status Report." Under the portion of the forms entitled, "[w]ork [i]njury [d]iagnosis [i]nformation," he variously added the notations "left wrist strain," "left shoulder strain," "left trapezius muscle strain," "left wrist repetitive motion syndrome," and "left wrist overuse syndrome." It is unclear how long Dr. Gardiner felt that appellant continued to have these conditions after June 1, 2001. The Office has not accepted that appellant sustained an employment-related left wrist repetitive motion syndrome or left wrist overuse syndrome.

[2] It does not appear that appellant stopped work on or after August 20, 2003.

By letter dated May 24, 2004, the Office informed appellant that an oral hearing would be held before an Office hearing representative at 11:15 a.m. on June 23, 2004 in Dallas, Texas. The Office advised her regarding the conditions for postponing an oral hearing.

The record contains evidence showing that appellant did not appear for the oral hearing scheduled for June 23, 2004.

By decision dated July 6, 2004, the Office determined that appellant abandoned her request for an oral hearing before an Office hearing representative. The Office found that appellant did not appear for the hearing scheduled for June 23, 2004 and did not explain this failure to appear either before or after the scheduled date of the hearing.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[3]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an employment-related left wrist strain and left trapezius muscle strain on June 1, 2001. Appellant alleged that she sustained a recurrence of disability on August 20, 2003 due to her June 1, 2001 employment injury. The Board finds that she did not submit sufficient medical evidence to establish an employment-related recurrence of disability.

In support of her claim, appellant submitted an August 22, 2003 report in which Dr. Gardiner, an attending Board-certified orthopedic surgeon, noted that she reported experiencing pain and a swelling sensation in both hands when she woke up in the morning, as well as pain in her left shoulder and a knot-like swelling in her left elbow. Although he diagnosed exacerbation of left wrist tendinitis, left wrist overuse syndrome, and exacerbation of left shoulder strain, Dr. Gardiner provided no indication that these conditions were related to the June 1, 2001 employment injury. Because this report does not contain an opinion on causal relationship, it has limited probative value regarding whether appellant sustained an employment-

[3] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). 20 C.F.R. § 10.5(x) provides, "*Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

related recurrence of disability as alleged.[4] The Office has not accepted that appellant sustained employment-related left wrist tendinitis or left wrist overuse syndrome and the medical evidence of record does not otherwise support such a finding.[5]

Prior to the submission of the August 22, 2003 report of Dr. Gardiner, the last medical reports of record were several reports of Dr. Gardiner and Dr. Ogunro, another attending Board-certified orthopedic surgeon, dated from mid to late 2002. Given this gap in the medical evidence, a well-rationalized medical report explaining the relation between the June 1, 2001 injury and appellant's claimed recurrence of disability in August 2003 is necessary in the present case. Appellant noted recurring symptoms in August 2003, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment[6] or that work activities produce symptoms revelatory of an underlying condition[7] does not raise an inference of causal relationship between a claimed condition and a given employment injury.

LEGAL PRECEDENT -- ISSUE 2

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

> "e. Abandonment of Hearing Requests.
>
> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.
>
> "Under these circumstances, H&R [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 DO [district office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.
>
> "(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the

[4] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[5] Moreover, Dr. Gardiner provided no indication that appellant could not continue in her light-duty position with the employing establishment.

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

"This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."[8]

ANALYSIS -- ISSUE 2

In the present case, the Office scheduled an oral hearing with an Office hearing representative at a specific time and place on June 23, 2004. The record shows that the Office mailed appropriate notice to appellant at her last known address. The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.[9]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after August 20, 2003 due to her June 1, 2001 employment injury. The Board further finds that the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

[9] *See also Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2004 and October 29, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member