United States Department of Labor
Employees' Compensation Appeals Board

W.C., Appellant	)	
	)	**Docket No. 08-366**
and	)	**Issued: October 16, 2008**
U.S. COAST GUARD, Baltimore, MD, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument September 9, 2008

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' May 18, 2007 merit decision finding that he had not established a injury on March 30, 2007 and a nonmerit decision from the Branch of Hearings and Review dated October 15, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether the Branch of Hearings and Review properly found that appellant had abandoned his request for an oral hearing; and (2) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on March 30, 2007.

FACTUAL HISTORY

On April 3, 2007 appellant, then a 54-year-old air conditioner equipment mechanic, filed a traumatic injury alleging on March 30, 2007 he fell in a hole on board ship and sustained multiple sprains.

On April 6, 2007 the Office requested additional factual and medical information and allowed 30 days for a response. Appellant submitted emergency room notes from Harbor Hospital and an ambulance record dated March 30, 2007. He went to the emergency room after a fall and injuries to his knee, neck and back. Appellant reported falling approximately six feet and injuring his neck, back, left knee and left ankle. The physician[1] noted that appellant had a contusion of the right wrist and hand, a closed head injury, and abrasions and fracture of the left sixth rib. Appellant also injured his left ankle and required an air cast. The physician noted sprain or strains of appellant's neck as well as his thoracic and lumbar spines.

In an April 9, 2007 report, Dr. John J. Murphy, a podiatrist, diagnosed ankle sprain, left foot. He noted appellant's history of falling and twisting his ankle two weeks prior to the April 9, 2007 examination. Dr. Murphy noted that appellant had swelling the left ankle laterally and pain on palpation of the median and lateral tendons.

By decision dated May 18, 2007, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that the incident occurred as alleged and that no medical evidence was received.[2]

Appellant requested an oral hearing on May 30, 2007. He provided his home address in Baltimore, Maryland. A letter dated August 20, 2007, sent to the address appellant provided the Branch of Hearings and Review, informed appellant that his hearing was scheduled for October 3, 2007 at 3:00 p.m. at Social Security Administration, 1010 Park Avenue, Suite 300 (Symphony Center) Baltimore, Maryland 21201. By decision dated October 15, 2007, the Branch of Hearings and Review found that appellant had abandoned his request for an oral hearing as he failed to appear at the scheduled hearing and failed to contact the Office either before or within 10 days after the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

A claimant who has received a final adverse decision by the Office 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.[3] Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and

[1] The signature is illegible.

[2] Following the Office's May 18, 2007 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[3] 20 C.F.R. § 10.616(a).

any representative at least 30 days before the scheduled date.[4] The Office has the burden of proving that it mailed to appellant and her representative a notice of a scheduled hearing.[5]

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 adviser the 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."[6]

ANALYSIS -- ISSUE 1

The Office issued a decision on May 18, 2007 denying appellant's claim for injury on March 30, 2007. Appellant requested a hearing with an Office hearing representative regarding this matter on May 30, 2007 and such a hearing was scheduled for November 7, 2006.

[4] 20 C.F.R. § 10.617(b). Office procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

[5] *See Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

[6] *See* Federal (FECA) Procedure Manual, *supra* note 4.

The Office scheduled an oral hearing before an Office hearing representative at a specific time and place on October 3, 2007. The record shows that it mailed appropriate notice to the claimant at his home address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he 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 Office procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act[7] has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.[8]

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[9] 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. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[10]

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's

[7] 5 U.S.C. §§ 8101-8193.

[8] *Jussara L. Arcanjo,* 55 ECAB 281, 283 (2004).

[9] 20 C.F.R. § 10.5(ee).

[10] *Id.*

diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.[11]

ANALYSIS -- ISSUE 2

Appellant stated that he fell on March 30, 2007. This description of his employment injury was repeated in the emergency room notes and by Dr. Murphy, a podiatrist. Appellant has provided a description of his employment incident which is consistent with his subsequent course of action, seeking medical treatment on March 30, 2007. The Board finds that appellant has established that he fell in the performance of duty on March 30, 2007. Appellant has established that the employment incident occurred as alleged.

The Board further finds that appellant has submitted sufficient medical evidence in support of his claim to require additional development by the Office. Appellant provided records from his emergency room treatment indicating that he had contusions of the right wrist and hand, closed head injury, abrasions and fracture of the left sixth rib as well as an injury to his left ankle. Dr. Murphy noted appellant's history of injury and diagnosed a left ankle sprain. These reports contain a diagnosis and a history of injury. While these reports are not sufficient to meet appellant's burden of proof, his immediate medical treatment on March 30, 2007 and follow-up treatment with Dr. Murphy on April 9, 2007 does raise an uncontroverted inference of causal relation between appellant's accepted employment incident and his physical injuries. The reports are sufficient to require the Office to undertake further development of his claim.[12] On remand, the Office should develop a statement of accepted facts and refer appellant to an appropriate physician to determine any medical conditions which resulted from the March 30, 2007 employment injury.

CONCLUSION

The Board finds that the Branch of Hearings and Review properly found that appellant had abandoned his request for an oral hearing. The Board also finds that appellant has established that the March 30, 2007 employment incident occurred as alleged and that additional development of his claim is necessary.

[11] *Id.*

[12] *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2007 decision of the Office of Workers' Compensation Programs is affirmed. The May 18, 2007 decision of the Office is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: October 16, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board