

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

B.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Santa Clarita, CA, Employer**

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**Docket No. 21-0509
Issued: August 17, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 17, 2021 appellant filed a timely appeal from an August 27, 2020 merit decision and a January 19, 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 13, 2020 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed spinal arthritis due to factors of his federal employment. He described carrying mail for over five years, which he believed aggravated his spinal arthritis. Appellant noted that he first became aware of his condition on November 23, 2019 and realized its relation to federal employment on November 25, 2019. He stopped work on July 1, 2020 and worked intermittently thereafter.

In support of his claim, appellant submitted a January 3, 2020 report from Dr. Edgardo Y. Francia, a Board-certified internist, who treated appellant for back pain that began in 2019. Dr. Francia noted that a thoracic spine x-ray performed in November 2019 revealed degenerative changes in the spine consistent with appellant's symptoms and complaints. He returned appellant to light duty. In a duty status report (Form CA-17) dated January 21, 2020, Dr. Francia noted clinical findings of back pain and diagnosed spinal arthritis. Appellant was returned to modified duty. In a work status report dated June 23, 2020, Dr. Francia noted that appellant was totally disabled from work from June 22 through 24, 2020. In separate a note dated June 23, 2020, he restricted appellant to four hours of mail delivery in an eight-hour work shift.

In a statement dated July 1, 2020, appellant indicated that his letter carrier duties involved heavy lifting, twisting, and bending, which he believed exacerbated his spinal condition.

In a development letter dated July 20, 2020, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded him 30 days to submit the necessary evidence.

On September 16, 2019 a nurse practitioner treated appellant for right mid-back pain radiating to the right side of appellant's body and increased blood pressure. Appellant reported working as a mail carrier, which involved prolonged walking and carrying.

On September 30, 2019 Dr. Estak M. Choudhury, a Board-certified emergency room physician, treated appellant for back pain and abdominal bloating.

Dr. Tony K. G. Hwang, a Board-certified family practitioner, evaluated appellant on October 4, 2019 for right upper back pain and abdominal discomfort. Appellant reported working as a postal carrier and was unsure if his back condition was work related, but reported lifting heavy boxes.

On November 7, 2019 Dr. Chris Aghayan, a Board-certified family practitioner, treated appellant for flank pain and muscle spasm of the thoracic back.

In a form report dated November 25, 2019, Dr. Phillip Nugent, a Board-certified surgeon, diagnosed thoracic strain that occurred on November 23, 2019. He returned appellant to modified duty.

In a physician's first report of occupational injury or illness dated November 25, 2019, Dr. Jack Feldsher, a Board-certified family practitioner, treated appellant for back pain. Appellant reported working as a city carrier and while delivering mail on November 23, 2019 he stepped on

a hole and fell. Appellant's history was significant for a prior thoracic strain. Findings on examination revealed mild right pain from T8-12, mild spasms, and limited range of motion. X-rays of the thoracic spine revealed degenerative joint disease from T10-12. Dr. Feldsher diagnosed thoracic sprain, initial encounter, muscle spasm of the back, and pain in the thoracic spine. He prescribed medication, and physical therapy and returned appellant to limited duty.

In visit summaries dated December 2, 2019 and June 23, 2020, Dr. Francia evaluated appellant for back pain and elevated blood pressure. In a December 4, 2019 progress note, he treated appellant in follow-up for upper back pain beginning two months prior. Findings on examination revealed normal range of motion, no bony tenderness, and no swelling of the cervical and thoracic back. Dr. Francia diagnosed back pain and elevated blood pressure. On December 17, 2019 he reviewed an x-ray of the thoracic spine, which revealed degenerative changes from T6-12 and L1. In a progress note dated January 3, 2020, Dr. Francia advised that appellant was reassigned to light duty due to back pain.

A registered nurse, evaluated appellant on July 14, 2020 and provided vital signs.

In a July 27, 2020 narrative statement, appellant responded to OWCP's development questionnaire. He reported being treated by Dr. Nugent, who indicated that carrying mail, lifting, and bending over a five-year period aggravated appellant's arthritic condition and resulted in his diagnosis. Appellant stated that he did not experience similar symptoms before his injury. He asserted that heavy lifting and carrying caused his back symptoms, which became progressively worse over time. Appellant listed outside activities of yoga, surfing, swimming, and gym workouts.

Appellant continued to treat with Dr. Francia, who on July 29, 2020 diagnosed back pain and elevated blood pressure. Dr. Francia noted that appellant was unable to work unless appellant was reassigned to a desk job. In an accompanying light-duty work ability evaluation he diagnosed spinal arthritis and provided permanent restrictions. In a letter dated July 29, 2020, Dr. Francia reported treating appellant since October 2019 for back pain, back spasms, and fatigue. He indicated that a thoracic spine x-ray performed in November 2019 revealed degenerative changes in the spine or arthritis and opined that these findings were consistent with appellant's symptoms. Dr. Francia recommended that appellant be reassigned to a desk job and avoid heavy lifting and carrying. In a work status report dated July 30, 2020, he placed appellant off work from July 6 through August 15, 2020. In a letter dated August 5, 2020, Dr. Francia reported treating appellant since October 2016 and advised that appellant did not complain of back pain until October 2019. He noted that a November 2019 x-ray of the thoracic spine revealed degenerative changes and arthritis and opined that appellant's symptoms were consistent with the x-ray findings. Dr. Francia further opined that appellant's symptoms were caused by constantly carrying heavy mail, up to 35 pounds, five days a week, averaging 12 to 13 miles of walking per day for years. He again requested that appellant be reassigned to a desk job and avoid lifting and carrying heavy items.

By decision dated August 27, 2020, OWCP accepted that the employment factors occurred, as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment factors. Thus, it concluded that the requirements had not been met to establish an injury as defined by FECA.

In an undated appeal request form postmarked September 2, 2020, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 5, 2020 notice, OWCP's hearing representative informed appellant that his oral hearing was scheduled for January 6, 2021 at 12:15 p.m. Eastern Standard Time (EST). He instructed appellant to "call the toll free number listed below ... [and w]hen prompted, enter the pass code." The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated January 19, 2021, OWCP determined that appellant had abandoned his request for an oral hearing as he failed to make an appearance. It further found that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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,³ 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical

² *Id.*

³ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁷ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

In support of his claim appellant submitted an August 5, 2020 letter from Dr. Francia who reported treating appellant since October 2016 and advised that appellant did not complain of back pain until October 2019. A November 2019 x-ray of the thoracic spine revealed degenerative changes and arthritis. Dr. Francia opined that appellant's condition was caused by constantly carrying heavy mail, up to 35 pounds, five days a week, averaging 12 to 13 miles of walking per day for years. Similarly, in a letter dated July 29, 2020, he reported treating appellant since October 2019 for back pain, back spasms, and fatigue. In other reports dated January 21 and July 29, 2020, Dr. Francia diagnosed spinal arthritis.

On November 25, 2019 Dr. Feldsher noted that appellant worked as a letter carrier and while delivering mail on November 23, 2019 he fell. He diagnosed thoracic sprain, initial encounter, muscle spasm of the back, and pain in the thoracic spine. On November 7, 2019 Dr. Aghayan treated appellant for flank pain and muscle spasm of the thoracic back. Dr. Nugent also treated appellant on November 25, 2019, who diagnosed thoracic strain that occurred on November 23, 2019.

The Board therefore finds that, based on the reports of Drs. Francia, Feldsher, Aghayan, and Nugent, appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

As the medical evidence of record establishes a diagnosed condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP 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.¹⁰ 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

⁸ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ 20 C.F.R. § 10.616(a).

representative at least 30 days before the scheduled date.¹¹ OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹²

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. 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

Following OWCP's August 27, 2020 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a November 5, 2020 letter, OWCP's hearing representative notified appellant that it had scheduled a telephonic hearing for January 6, 2021 at 12:15 p.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate. However, appellant neither appeared for the scheduled hearing, nor requested a postponement or provided an explanation to OWCP for his failure to appear within 10 days of the scheduled hearing.¹⁴ The Board thus finds that OWCP properly determined that he abandoned his request for an oral hearing.¹⁵

CONCLUSION

The Board finds that this case is not in posture for decision with regard to whether appellant has met his burden of proof to establish medical conditions causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly determined that he abandoned his request for an oral hearing before an OWCP hearing representative.

¹¹ *Id.* at § 10.617(b).

¹² *T.R.*, Docket No. 19-1952 (issued April 24, 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).

¹³ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁴ *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

¹⁵ *Supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board and the January 19, 2021 decision is affirmed.

Issued: August 17, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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