

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

J.T., Appellant)

and)

**DEPARTMENT OF THE ARMY, U.S. MILITARY)
ACADEMY, West Point, NY, Employer**)

**Docket No. 24-0299
Issued: April 26, 2024**

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 January 31, 2024 appellant filed a timely appeal from an August 23, 2023 merit decision and a December 29, 2023 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 her burden of proof to establish a left knee condition causally related to the accepted March 24, 2023 employment incident; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 15, 2023 appellant, then a 63-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 24, 2023 she sustained a left knee injury when she rose from her desk and struck her knee on a garbage can 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.

In a development letter dated June 22, 2023, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. No response was received.

In a subsequent development letter dated July 20, 2023, OWCP indicated that it had performed an interim review of appellant's case file and found that the evidence remained insufficient to support her claim. It further reminded her that by letter of June 22, 2023 it had afforded her 60 days to submit the requested information.

In an attending physician's report (Form CA-20) dated August 17, 2023, Dr. Barry Hyman, a Board-certified orthopedic surgeon, recounted appellant's history of injury and indicated a diagnosis of chondromalacia of the left knee. His physical examination indicated tenderness over the patella region. Dr. Hyman checked a box marked "Yes" to the question of whether he believed that appellant's condition was caused or aggravated by an employment activity. Dr. Hyman referred her to physical therapy and allowed her to return to work.

In a referral note dated August 17, 2023, Dr. Hyman reiterated his diagnosis and provided referrals for a magnetic resonance imaging scan and physical therapy.

By decision dated August 23, 2023, OWCP denied appellant's traumatic injury claim, finding that she had not established that her diagnosed condition was causally related to the accepted employment incident.

OWCP received additional progress reports from Dr. Hyman. Appellant also submitted a narrative statement dated September 22, 2023.

On September 22, 2023 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 7, 2023 notice, OWCP's hearing representative informed appellant that an oral hearing was scheduled for December 13, 2023 at 4:00 p.m. Eastern Standard Time (EST). Appellant was provided 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 December 29, 2023, 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 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, 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.³ 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.⁴

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 and can be established only by medical evidence.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ 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.⁷ 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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of

² *Id.*

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *Id.*

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 appellant has not met her burden of proof to establish a left knee condition causally related to the accepted March 24, 2023 employment incident.

Appellant submitted an attending physician's report (Form CA-20) dated August 17, 2023 from Dr. Hyman. While Dr. Hyman indicated by checking a box marked "Yes" that the diagnosed condition was causally related to the employment activity described but he did not specifically explain how the employment incident itself physiologically caused the left knee condition. The Board has held that reports that address causal relationship only by checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, are of diminished probative value.¹⁰ This report, therefore, is insufficient to establish the claim.

Appellant further submitted a physical therapy referral note from Dr. Hyman that reiterated his diagnosis. While he provided a diagnosis, Dr. Hyman did not provide a rationalized opinion between the diagnosed condition and the employment injury. As the Board has held, medical evidence which 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 This evidence is thus also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a diagnosed medical condition and the accepted March 24, 2023 employment incident, the Board finds that appellant 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 decision within 30 days of the date of the decision for which a hearing is sought.¹² Unless

⁹ *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).

¹⁰ *See J.O.*, Docket No. 22-0240 (issued June 8, 2022); *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *D.A.*, Docket No. 20-0951 (issued November 6, 2020); *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ *See C.R.*, Docket No. 23-0330 (issued July 28, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² 20 C.F.R. § 10.616(a).

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.¹³ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷

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 August 23, 2023 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 November 7, 2023 notice, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for December 13, 2023 at 4:00 p.m. EST. A notice was mailed 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.¹⁸

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

¹³ *Id.* at § 10.617(b).

¹⁴ *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).

¹⁵ 20 C.F.R. § 10.622(f).

¹⁶ *Id.*

¹⁷ 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).

¹⁸ *L.L.*, *supra* note 14; *V.C.*, *supra* note 14; *L.T.*, *supra* note 14.

scheduled hearing explaining her failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.¹⁹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted March 24, 2023 employment incident. The Board further finds that OWCP properly determined that she 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 August 23 and December 29, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 26, 2024
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

¹⁹ *Id.*