

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

B.K., Appellant	)	
	)	
and	)	Docket No. 24-0728
	)	Issued: July 30, 2024
DEPARTMENT OF HOMELAND SECURITY,	)	
CUSTOMS & BORDER PROTECTION,	)	
Brunswick, GA, Employer	)	
	)	

*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 June 21, 2024 appellant filed a timely appeal from a February 26, 2024 merit decision and a June 13, 2024 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act<sup>1</sup> (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 medical diagnosis in connection with the accepted employment factors; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 7, 2023 appellant, then a 30-year-old customs and border protection agent, filed an occupational disease claim (Form CA-2) alleging that he sustained pain in his left testicle due to factors of his federal employment, including performing physical activities, including running and lifting weights. He noted that he first became aware of his condition on September 4, 2023, and realized its relation to factors of his federal employment on November 20, 2023. Appellant did not stop work.

In an accompanying statement, appellant related that in September 2023 he participated in training to become a customs agent. He used a rowing machine on September 4, 2023 as part of his physical training and experienced numbness in his left leg and left testicle. The discomfort in appellant's left testicle increased in October 2023 during physical fitness classes and weight-lifting classes. After he had completed training, he sought medical treatment.

In a development letter dated December 19, 2023, OWCP advised appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In a follow-up letter dated January 24, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the December 19, 2023 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No response was received.

By decision dated February 26, 2024, OWCP denied appellant's occupational disease claim. It found that he had not established a medical diagnosis in connection with the accepted employment factors.

On March 7, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.<sup>2</sup>

Appellant subsequently submitted a March 26, 2024 report from Dr. Stephen Tannenbaum, a Board-certified urologist, who noted that appellant had experienced pain in the testicles that began during training and increased with weight training. Dr. Tannenbaum diagnosed epididymitis.

In a notice dated April 10, 2024, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for June 6, 2024 at 9:30 a.m., Eastern Standard Time (EST). The notice provided instructions, along with the toll-free number and the passcode needed to access the telephone hearing. The notice was mailed to his last known address of record. Appellant did not appear for the hearing and no request for postponement was received.

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<sup>2</sup> On the appeal request form, appellant listed a different mailing address. On March 13, 2024 OWCP acknowledged appellant's change of mailing address. Appellant submitted a second request for an oral hearing on March 27, 2024.

By decision dated June 13, 2024, OWCP found that appellant had abandoned his request for an oral hearing because he had received written notification of the hearing 30 days in advance, but failed to appear. It further found no indication in the case record that he had contacted the Branch of Hearings and Review either before or after the scheduled hearing to request a postponement or explain his failure to appear.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> 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 filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> 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.<sup>6</sup>

In an occupational disease claim, appellant's burden of proof requires submission of the following: (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 employee.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> 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.<sup>9</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *R.W.*, Docket No. 23-0527 (issued December 29, 2023); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *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).

<sup>7</sup> *E.L.*, Docket No. 24-0232 (issued April 9, 2024); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>8</sup> *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>9</sup> *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

### ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical diagnosis in connection with the accepted employment factors.

OWCP, in a December 19, 2023 development letter, advised appellant of the deficiencies of his claim and the need to submit supporting medical evidence. However, appellant failed to submit any medical evidence prior to OWCP's February 26, 2024 merit decision.

As noted, appellant's burden of proof includes the submission of medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and that the diagnosed condition is causally related to the accepted employment factors.<sup>10</sup> The record contains no medical evidence submitted before OWCP's merit decision. As appellant has not submitted medical evidence establishing medical diagnosis in connection with the accepted employment factors, the Board finds that he has not met his burden of proof.<sup>11</sup>

### 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

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<sup>10</sup> *Supra* note 7.

<sup>11</sup> *See T.L.*, Docket No. 24-0496 (issued June 21, 2024); *R.C.*, Docket No. 17-1294 (issued December 20, 2018); *B.G.*, Docket No. 18-0784 (issued November 9, 2018).

<sup>12</sup> 20 C.F.R. § 10.616(a).

<sup>13</sup> *Id.* at § 10.617(b).

<sup>14</sup> *K.A.*, Docket No. 22-1168 (issued December 8, 2022); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>15</sup> 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) (September 2020); *K.A.*, *id.*; *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

## **ANALYSIS -- ISSUE 2**

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

Following OWCP's February 26, 2024 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an April 10, 2024 notice, OWCP's Branch of Hearings and Review representative informed appellant that it had scheduled a telephonic hearing for June 6, 2024 at 9:30 a.m., EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.<sup>16</sup> Appellant did not request a postponement and failed to call in for the scheduled hearing or otherwise provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining his failure to appear.

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

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.

## **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical diagnosis in connection with the accepted employment factors. The Board further finds that OWCP properly determined that he abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

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<sup>16</sup> 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 presumption is commonly referred to as the mailbox rule. Appellant has not submitted evidence to rebut this presumption. *G.C.*, Docket No. 23-0135 (issued July 27, 2023); *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). *See also J.F.*, Docket No. 23-0348 (issued July 24, 2023); *J.W.*, Docket No. 22-1094 (issued January 23, 2023).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26 and June 13, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 30, 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