

her federal employment. She explained that the north dock doors were not maintained and that the leg strength she used at the doors caused or aggravated her right knee. Appellant became aware of her condition on January 4, 2016, and that it was caused or aggravated by her federal employment on May 6, 2023. She stopped work on May 9, 2023 and has not returned.

In a narrative statement, appellant's supervisor, C.W., noted that appellant was not in his unit on January 4, 2016. He indicated that appellant was being investigated for poor attendance prior to filing the claim, and she never told her supervisor about the alleged May 6, 2023 injury before stopping work on May 9, 2023. C.W. also noted that appellant underwent a surgical procedure on May 26, 2023.

In a May 9, 2023 report, Dr. Omkar H. Dave, a Board-certified orthopedic surgeon, diagnosed a tear of medial meniscus of right knee based on May 8, 2023 x-ray and May 9, 2023 magnetic resonance imaging (MRI) scan findings. In a June 13, 2023 report, he provided assessments of tear of medial meniscus of knee and osteoarthritis of right knee joint. Dr. Dave noted a prior encounter with appellant on May 16, 2023 for the same diagnoses.

In a June 21, 2023 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit additional evidence and to respond to its inquiries. By a separate letter of even date, it also requested additional factual information from the employing establishment regarding the physical requirements of her employment duties. Neither appellant nor the employing establishment responded.

In a July 19, 2023 letter, OWCP advised that an interim review of appellant's case revealed that the evidence remained factually and medically insufficient to support her claim. It requested that she complete the factual questionnaire sent to her on September 21, 2023, and that she provide a comprehensive report from her physician with a medical explanation as to whether her work-related exposure resulted in the diagnosed condition. OWCP further advised that appellant had previously been afforded 60 days from its June 21, 2023 letter to submit the requested information.

OWCP thereafter received progress reports dated May 9 and 16, June 13, and July 6 and 27, 2023 from Dr. Dave. Dr. Dave noted that appellant was first seen on May 9, 2023 for right knee pain. Appellant recounted a history of a previous fall after being pushed by an employee at work in 2016, she was diagnosed with an anterior cruciate ligament (ACL) tear, her pain and symptoms were managed with ice and ibuprofen.² She indicated that her pain was continuous with swelling after working her shift. Based on x-ray and MRI scan findings, Dr. Dave provided assessments of tear of medial meniscus right knee and osteoarthritis of right knee joint. Appellant underwent right knee arthroscopic partial medial meniscectomy on May 26, 2023, which Dr. Dave performed.

By decision dated August 23, 2023, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the alleged factors of employment. It concluded, therefore, that she had not met the requirements to establish an injury as defined under FECA.

² There is no record of appellant filing a claim for this alleged injury.

On September 18, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 14, 2023 notice, OWCP's hearing representative informed appellant that a telephonic hearing was scheduled for December 15, 2023 at 10:30 p.m., Eastern Standard Time (EST). The notice provided a toll-free number and the required passcode to participate in the telephone hearing. The hearing representative mailed the notice to appellant's last known address of record.

Appellant did not call-in for the scheduled hearing and there is no indication that she requested postponement.

By decision dated December 29, 2023, OWCP found that appellant had abandoned her request for an oral hearing. It determined that she had failed to appear at the telephonic hearing scheduled for December 15, 2023, and had failed to contact OWCP either before or after the scheduled hearing to request a postponement or explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ 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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit 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 identified employment factors.⁷

³ 5 U.S.C. § 8101 *et seq.*

⁴ *See C.H.*, Docket No. 19-1781 (issued November 13, 2020); *J.S.*, Docket No. 19-1392 (issued February 13, 2020); *S.D.*, Docket No. 19-1240 (issued December 11, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.S., id.*; *T.W.*, Docket No. 18-0788 (issued July 22, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *J.S., id.*; *T.W., id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.D., supra* note 4; *P.S.*, Docket No. 19-0549 (issued July 26, 2019).

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a right knee injury in the performance of duty, as alleged.

To establish a claim for compensation in an occupational disease claim, an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition. Appellant has not provided sufficient detail to establish that, an occupational exposure occurred, as alleged, because she did not adequately describe the circumstances of her injury, the duties she was performing which caused her injury, or the mechanism of injury.¹⁰

Despite OWCP's request for clarification of the factual circumstances of her claim, appellant failed to respond. Appellant has also not described a clear mechanism of injury as she did not explain why the allegedly inadequately maintained dock doors caused her to exert additional leg strength.

Further, the history of injury appellant related to her medical provider detailed inconsistent descriptions of the mechanism of injury.¹¹ She recounted to Dr. Dave a history of a fall after being pushed by an employee at work in 2016 which resulted in an ACL tear. Dr. Dave did not recount a history of injury involving the dock doors, but rather noted that appellant was first seen on May 9, 2023 for right knee pain. These circumstances, which include a vague description of the alleged employment factors, late notification of injury, inconsistent history, and a delay in seeking medical treatment, cast serious doubt on the validity of the claim.¹²

As the evidence of record is insufficient to establish a right knee injury in the performance of duty, the Board finds that appellant has not met her burden of proof.

⁸ *K.F.*, Docket No. 18-0485 (issued February 18, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

⁹ *K.F.*, *id.*; *D.R.*, Docket No. 19-0072 (issued June 24, 2019).

¹⁰ *D.J.*, Docket No. 2-0684 (issued September 21, 2020); *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

¹¹ *See L.Y.*, Docket No. 21-0221 (issued June 30, 2021).

¹² *See D.T.*, Docket No. 22-1156 (issued April 24, 2023).

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

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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶

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, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a November 14, 2023 letter, OWCP notified her that a telephonic hearing was scheduled for December 15, 2023 at 10:30 a.m., EST. OWCP properly mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate.¹⁷

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.¹⁸ Appellant did not request a postponement and failed to call-in for the scheduled hearing or otherwise provide notification to OWCP's Branch of

¹³ 20 C.F.R. § 10.616(a).

¹⁴ *Id.* at § 10.617(b).

¹⁵ *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).

¹⁶ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6g (September 2020); *K.A.*, *id.*; *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

¹⁷ *E.H.*, Docket No. 23-1011 (issued January 24, 2024); *J.F.*, Docket No. 23-0348 (issued July 24, 2023); *J.W.*, Docket No. 22-1094 (issued January 23, 2023).

¹⁸ *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).

Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear. The Board, therefore, finds that she abandoned her request for an oral hearing.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right knee injury in the performance of duty, as alleged. 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: May 6, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board