

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

R.H., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
CUSTOMS AND BORDER PROTECTION,
SAULT SAINTE MARIE PORT OF ENTRY,
Sault Sainte Marie, MI, Employer**

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) **Docket No. 25-0188**
) **Issued: January 31, 2025**
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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

JURISDICTION

On December 18, 2024 appellant filed a timely appeal from a July 17, 2024 merit decision and a November 25, 2024 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 in connection with the accepted May 17, 2023 employment incident; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing.

FACTUAL HISTORY

On May 17, 2023 appellant, then a 44-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he was exposed to airborne narcotics

¹ 5 U.S.C. § 8101 *et seq.*

when he removed fentanyl and methamphetamine from a vehicle while in the performance of duty. He did not stop work.

In a May 7, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 60 days to submit the necessary evidence.

OWCP thereafter received a May 17, 2023 emergency department report by Dr. Bryant M. Bullock, an emergency medicine specialist, who indicated that appellant related complaints of dizziness, which he attributed to exposure to crystal methamphetamine when a tire exploded. Dr. Bullock noted that he denied shortness of breath and chest pain, and his physical examination was normal. He noted exposure to methamphetamine.

An emergency medical services (EMS) report also dated May 17, 2023 indicated that appellant related that he had possibly been exposed to crystal methamphetamine and requested to be transported to a hospital for further evaluation.

In a follow-up development letter dated June 6, 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 May 7, 2024 letter to submit the requested supporting 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.

In a June 16, 2024 statement in response to OWCP's questionnaire, appellant indicated that he and several other officers were exposed to fentanyl and methamphetamine. He noted that he and others were taken by ambulance to the hospital for observation.

By decision dated July 17, 2024, OWCP accepted that the May 17, 2023 employment incident occurred, as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that he had not met the requirements to establish an injury as defined by FECA.

On July 28, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By notice dated October 11, 2024, OWCP's hearing representative informed appellant that a telephonic hearing was scheduled for November 15, 2024 at 9:30 a.m. Eastern Standard Time (EST). The notice provided the toll-free number to call and appropriate passcode to access the hearing. The hearing representative mailed the notice to appellant's last known address of record.

By decision dated November 25, 2024, an OWCP hearing representative found that appellant had abandoned his request for an oral hearing as he had received written notification of the hearing 30 days in advance but failed to appear. The hearing representative further found that there was no indication in the case record that he had contacted the Branch of Hearings and Review either prior to or after 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 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.⁶

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 incident identified by the claimant.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted May 17, 2023 employment incident.

In support of his claim, appellant submitted a May 17, 2023 emergency department report by Dr. Bullock, who documented a normal examination and diagnosed exposure to methamphetamine. Section 10.303 of OWCP's regulations provides that "simple exposure" to a workplace hazard does not constitute a work-related injury entitling an employee to medical

² *Id.*

³ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *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).

⁷ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

treatment under FECA unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.⁹ Since appellant has not submitted medical evidence diagnosing an identifiable medical condition, he has not met his burden of proof to establish his claim.¹⁰

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.¹¹ 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.¹² OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹³

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.¹⁴

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.¹⁵

ANALYSIS -- ISSUE 2

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

The record establishes that on October 11, 2024 in response to appellant's request for an oral hearing, a representative of OWCP's Branch of Hearings and Review properly mailed a notice of the scheduled telephonic hearing to be held on November 15, 2024 at 9:30 a.m., EST. The hearing notice was mailed to appellant at his last known address of record and provided

⁹ 20 C.F.R. § 10.303; *J.K.*, Docket No. 18-1508 (issued February 5, 2019).

¹⁰ *See L.F.*, Docket No. 19-1845 (issued May 8, 2020).

¹¹ 20 C.F.R. § 10.616(a).

¹² *Id.* at § 10.617(b).

¹³ *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463(1991).

¹⁴ *Supra* note 11 at § 10.622(f).

¹⁵ *Id.*; *M.C.*, Docket No. 21-0351 (issued June 29, 2021); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

instructions for participation. Appellant, however, failed to call in for the scheduled hearing using the provided telephone number and passcode. He did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for a telephonic oral hearing.¹⁶

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted May 17, 2023 employment incident. The Board further finds that OWCP properly determined that he abandoned his request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the July 17 and November 25, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.¹⁷

Issued: January 31, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁶ *Id.*

¹⁷ James D. McGinley, Alternate Judge, participated in the preparation of this decision, but was no longer a member of the Board effective January 12, 2025.