United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 07-1247**
	)	**Issued: November 9, 2007**
INTELLIGENCE & SECURITY COMMAND, CIVILIAN PERSONNEL ADVISORY CENTER, Fort Huachuca, AZ, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 5, 2007 appellant timely appealed an October 16, 2006 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim and a February 14, 2007 decision finding that she abandoned her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty causally related to factors of her federal employment; and (2) whether the Office properly determined that she abandoned her hearing request.

FACTUAL HISTORY

On August 28, 2006 appellant, a 48-year-old security assistant, filed a traumatic injury claim alleging that on August 17, 2006 she experienced a headache and became faint, weak and

nauseous after being overheated in a classroom where the air conditioner had malfunctioned. She went to the nurse and was advised that her blood pressure was high.

On September 7, 2006 the Office requested that appellant submit additional evidence. The Office requested a comprehensive medical report from her physician that included a diagnosis and an opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

In an August 17, 2006 note, a nurse from the employing establishment's occupational health unit indicated that appellant underwent a screening examination for hypertension and had her blood pressure checked after she had worked in a room without air conditioning. Appellant admitted to being noncompliant with her medications. In an August 21, 2006 report, Dr. Joseph N. Piper, a Board-certified emergency physician, reported that appellant presented with a history of shortness of breath, dizziness and diarrhea. A clinical impression of heat injury and diarrhea was provided. In an August 21, 2006 clinic note, Dr. Piper indicated that appellant should be off work three days due to the heat injury. The Office also received an August 28, 2006 clinic note from a physician's assistant which indicated that appellant could return to work on August 28, 2006.

By decision dated October 16, 2006, the Office denied appellant's claim, finding that she failed to establish an injury in the performance of duty. Although she established the August 17, 2006 incident, the medical evidence provided did not establish that her claimed condition resulted from the accepted heat exposure.

On October 20, 2006 appellant requested an oral hearing by way of a teleconference. She also submitted an October 4, 2006 report from her treating physician, Dr. Piper.

In a January 10, 2007 notice, the Office informed appellant that a telephonic hearing on her claim would be held on February 9, 2007. Appellant was advised to call the toll free number at the scheduled hearing time and to enter the pass code provided when prompted. She did not appear for the telephonic hearing.

By decision dated February 14, 2007, the Office determined that appellant had abandoned her request for a hearing. It noted that she failed to appear for the scheduled telephonic hearing on February 9, 2007 and had not contacted the Office either before or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of the claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which

[1] 5 U.S.C. §§ 8101-8193.

compensation is claimed is causally related to the employment injury.[2] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[3]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[4] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[5]

An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[6]

ANALYSIS -- ISSUE 1

Appellant is a federal employee and she timely filed her claim for compensation benefits. The Office also accepted that the workplace exposure to overheating occurred as alleged on August 17, 2006. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury.

The medical evidence of record consists of an August 21, 2006 report and clinic note from Dr. Piper. However, the physician did not provide a reasoned medical opinion establishing that the employment incident caused or aggravated a diagnosed condition. The Office also received an August 17, 2006 note from a nurse at the employing establishment's occupational health unit and an August 28, 2006 clinic note from a physician's assistant at the ELMS Creek

[2] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[4] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[5] *John W. Montoya*, 54 ECAB 306 (2003).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

Family /Urgent Care Clinic. However, a nurse is not a "physician" as defined under the Act. The nurse's note does not constitute medical evidence and has no weight or probative value.[7]

The Board finds that appellant has not submitted rationalized medical evidence establishing that her claimed condition is causally related to the accepted employment incident. Accordingly, appellant has failed to establish that she sustained an injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

The Office's regulations at 20 C.F.R. § 10.622 provide guidance regarding a claimant's request to postpone a hearing:

> "(b) [The Office] will entertain any reasonable request for scheduling the oral hearing, but such requests should be made at the time of the original application for hearing. Scheduling is at the sole discretion of the hearing representative, and is not reviewable. Once the oral hearing is scheduled and [the Office] has mailed appropriate written notice to the claimant, the oral hearing cannot be postponed at the claimant's request for any reason except those stated in paragraph (c) of this section, unless the hearing representative can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing does not meet the test of paragraph (c) of this section and cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly. In the alternative, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.
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> "(c) Where the claimant is hospitalized for a reason which is not elective, or where the death of the claimant's parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation."[8]

The Office procedure manual recognizes that claimants will continue to request postponement for an unspecified reason or for any other reason other than the extraordinary reasons described in 20 C.F.R. § 10.622(c). Where the request for postponement is received in sufficient time to contact the claimant prior to the scheduled hearing (*i.e.*, 10 days for mailing or through a documented telephone contact), the Office hearing representative should advise the claimant that the postponement will not be allowed pursuant to the regulations at 20 C.F.R. § 10.622(b). The claimant would then have the options to withdraw the hearing request, attend the scheduled hearing, reschedule the hearing at an available time within the same docket, opt for

[7] *See Jan A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term physician. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[8] 20 C.F.R. § 10.622(b), (c).

a review of the written record by the Office hearing representative, or have a telephonic hearing, if the Office hearing representative wished to grant such a hearing within his or her discretion.[9]

With respect to abandonment of hearing requests, Chapter 2.1601.6(e) the Office's procedure manual provides in relevant part:

> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled hearing request.
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> "Under these circumstances, [the Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [district Office].
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> "(2) However, in any case where a request for a postponement has been received, regardless of any failure to appear for the hearing, [the Branch of Hearings and Review] should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.
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> "This course of action is correct even if [the Branch of Hearings and Review] can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."[10]

ANALYSIS -- ISSUE 2

In finding that appellant had abandoned her October 20, 2006 request for a hearing the Office noted that a telephone hearing had been scheduled for February 9, 2007. The record shows that the Office mailed appropriate notice to appellant of the hearing at her last known address. Office regulations, at 20 C.F.R. § 10.617(b), provides that a 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. In this case, the scheduled hearing of February 9, 2007 fell on the 30th day of the Office's January 10, 2007 notice. As the Office's notice of the hearing was "at least" 30 days before the scheduled hearing date, appellant received timely written notification of the hearing 30 days in advance. However, she failed to telephone the hearing representative as instructed.

Appellant asserts on appeal that she was making funeral arrangements during the week of the scheduled hearing and had telephoned the Office a week prior to her scheduled hearing.

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[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.d (January 1999).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearing and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also Claudia J. Whitten*, 52 ECAB 483 (2001); 20 C.F.R. § 10.622.

However, the Board finds that the record contains no evidence that she requested postponement of the hearing pursuant to the regulations at 20 C.F.R. § 10.622 or had contacted the Office to reschedule the hearing or explain her failure to participate in the scheduled telephonic hearing. Appellant failed to participate in the scheduled hearing and did not provide any notification of such failure within 10 days of the scheduled hearing. As the circumstances of this case meet the criteria for abandonment as provided in Chapter 2.1601.6(e) of the Office's procedures, the Board finds that appellant abandoned her request for an oral hearing.

CONCLUSION

The Board finds that appellant failed to establish that her claimed condition was sustained in the performance of duty. The Board further finds that the Office properly determined that she abandoned her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 14, 2007 and October 16, 2006 are affirmed.

Issued: November 9, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board