



## **FACTUAL HISTORY**

On April 19, 2011 appellant, then a 49-year-old temporary causal mail handler, filed a traumatic injury claim alleging that on July 4, 2010 she injured her back while pushing heavy containers while performing her mail handler duties. She stopped work on July 22, 2010.

Appellant was treated by Dr. Stephen Dietrich, Board-certified in occupational medicine, on July 22, 2010 for back pain and diagnosed sprain/strain of the thoracic back. She reported injuring her back while at work. Dr. Dietrich recommended physical therapy and noted that appellant could return to light-duty work on July 26, 2010.

In a letter dated July 29, 2010, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim. Appellant submitted additional evidence.

In an August 31, 2010 decision, OWCP denied appellant's claim on the grounds that medical evidence was insufficient to establish that her claimed conditions were caused by her employment. It advised that medical treatment was not authorized and that any prior authorization was terminated.

On September 13, 2010 appellant requested a videoconference hearing. On December 9, 2010 OWCP advised her that a telephonic hearing would be held January 14, 2011 at 12:00 p.m., eastern time. It instructed appellant to call the provided toll-free number a few minutes before the hearing time and enter the pass code to gain access to the conference call. OWCP mailed the December 9, 2010 letter to her address of record.

On December 13, 2010 appellant telephoned OWCP in response to the hearing notice and indicated that she did not request a hearing. She attempted to call the telephone number and code listed on the notice; however, she could not reach OWCP. OWCP's representative explained the process for the telephone hearing. Appellant requested a copy of the hearing request for her review. OWCP informed her that she could cancel the hearing and instructed her to send a written statement to OWCP. Appellant indicated that she would review the document and decide whether she would keep the hearing.

By decision dated February 18, 2011, OWCP found that appellant had abandoned her request for a hearing. It found that she received a written notice of the hearing 30 days before the scheduled hearing but did not appear or explain her absence either before or after the scheduled hearing.

## **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>3</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice

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<sup>3</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>4</sup>

The authority governing the abandonment of hearings rests with OWCP's procedure manual, which provides that a hearing can be 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 date of the hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned her request for a hearing and return the case to the district Office.<sup>5</sup>

### **ANALYSIS**

By decision dated August 31, 2010, OWCP denied appellant's claim for a traumatic injury. Appellant timely requested an oral hearing. In a December 9, 2010 letter, it notified her that a telephonic hearing was scheduled for January 14, 2011 at 12:00 p.m. eastern time. OWCP instructed appellant to telephone a toll-free number and enter a pass code to connect with the hearing representative. Appellant did not telephone at the appointed time. She did not request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of January 14, 2011. The Board therefore finds that appellant abandoned his request for a hearing.

On appeal appellant asserted that she was injured at work and OWCP improperly denied her claim. She indicated that she was not treated fairly and has not seen a physician in over a year for her injury. The Board notes, however, that it only has jurisdiction over whether the Office properly determined that appellant abandoned her request for a hearing. As explained, appellant failed to request a postponement; failed to appear at a scheduled hearing; and failed to provide any notification for such failure within 10 days of the scheduled date and therefore abandoned her request for an oral hearing.<sup>6</sup>

### **CONCLUSION**

The Board finds that appellant abandoned her request for an oral hearing.

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<sup>4</sup> 20 C.F.R. § 10.617(b).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999). *See also G.J.*, 58 ECAB 651 (2007).

<sup>6</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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