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<b>M.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-849</b>
	)	<b>Issued: October 18, 2011</b>
<b>DEPARTMENT OF HEALTH &amp; HUMAN</b>	)	
<b>SERVICES, INDIAN HEALTH SERVICE,</b>	)	
<b>Phoenix, AZ, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
 RICHARD J. DASCHBACH, Chief Judge  
 MICHAEL E. GROOM, Alternate Judge  
 JAMES A. HAYNES, Alternate Judge

On February 17, 2011 appellant filed a timely appeal from the December 29, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which found that she had abandoned her request for a hearing. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

The issue is whether appellant abandoned her request for a hearing.

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

### **FACTUAL HISTORY**

On August 12, 1996 appellant, a 45-year-old nurse, sustained an injury in the performance of duty when she stood up from her desk and hit her head on an open cupboard door. OWCP accepted her claim for neck sprain.

On June 16, 2010 OWCP notified appellant that it proposed to terminate her compensation benefits. Appellant responded with a statement dated June 28, 2010.

On July 23, 2010 OWCP issued a decision terminating appellant's benefits for the August 12, 1996 injury.

Appellant requested for an oral hearing before an OWCP hearing representative.

On October 18, 2010 OWCP issued a notice that an informal telephone hearing would be held on November 29, 2010 at 11:30 a.m. It sent this notice to appellant's address of record, the same address used for the notice of proposed termination and decision terminating benefits, and the same address she provided with her responses to each. On October 29, 2010, however, a letter was returned to OWCP as "not deliverable as addressed, unable to forward."

In a decision dated December 29, 2010, OWCP found that appellant had abandoned her request for a hearing. It noted that she received written notice of the hearing 30 days in advance but failed to appear. Further, OWCP noted no indication that appellant made any contact before or after the hearing to explain her failure to appear. Under those circumstances, it determined, she abandoned her request.

On appeal, appellant states that she never received notice of the hearing. She stated that she advised her case worker in the Florida regional office "that due to your stopping of my benefits I was going to be changing my address to the address listed on this correspondence in October of 2010."<sup>2</sup> Appellant added that she was not expecting notification so soon.

### **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 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>

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<sup>2</sup> Appellant's return address for the current appeal was in Richland, North Carolina. She notified the Board of a further change of address on June 6, 2011.

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

<sup>4</sup> 20 C.F.R. § 10.617(b).

OWCP has the burden of proving that it mailed notice of a scheduled hearing to the claimant.<sup>5</sup> It is the claimant's responsibility to inform OWCP of any change of address.<sup>6</sup>

A hearing can be considered abandoned only under very limited circumstances.<sup>7</sup> All three of the following conditions must be present: (1) the claimant has not requested a postponement; (2) the claimant has failed to appear at a scheduled hearing; and (3) the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, OWCP's hearing representative will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.<sup>8</sup>

### ANALYSIS

In response to appellant's request for an oral hearing, OWCP issued a notice on October 18, 2010 that an informal hearing would be held on November 29, 2010 at 11:30 a.m. So it mailed this notice at least 30 days before the scheduled date. OWCP properly mailed the notice to appellant's last known address, which was the same address she provided in her request for a hearing. A copy of the notice appears in the record, establishing that OWCP properly mailed the notice of hearing to appellant.

The record contains no evidence that appellant requested a postponement of the scheduled hearing. Appellant did not call at the appointed time and she failed to provide any notification for such failure within 10 days of the scheduled date. As all three conditions have been satisfied pursuant to OWCP procedures, the Board finds that appellant abandoned her request for a hearing. The Board will affirm OWCP's December 29, 2010 decision.<sup>9</sup>

Appellant states on appeal that she never received notice of the hearing. She explains that she advised her case worker in the Florida regional office "that due to your stopping of my benefits I was going to be changing my address to the address listed on this correspondence in October of 2010." The Board has carefully reviewed the record and finds no evidence that appellant informed OWCP of any change of address following the termination of her benefits or following her request for a hearing. OWCP properly mailed the notice to her last known address, the address she provided with her hearing request, but it appears from what she states on appeal that she moved in the meantime and therefore did not receive the notice. This would be consistent with a letter returned to OWCP on October 29, 2010 as "not deliverable as addressed, unable to forward." It is a claimant's responsibility to keep OWCP informed of such changes (if

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<sup>5</sup> *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

<sup>6</sup> *Jack Sucic*, 39 ECAB 1338 (1988); *see* 20 C.F.R. § 10.127 (a copy of the decision shall be sent to the employee's last known address).

<sup>7</sup> *Claudia J. Whitten*, 52 ECAB 483 (2001); *V.C.*, Docket No. 10-1889 (issued March 11, 2011).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

<sup>9</sup> *F.L.*, Docket No. 10-2264 (issued August 10, 2011) (where the claimant contended on appeal that OWCP sent the notice of hearing to his former address, which had changed months earlier, such that he did not receive the notice, the Board found that OWCP properly mailed the notice to his last known address).

not to leave a forwarding address), and the record lacks any written notice or telephone communication informing OWCP of the apparent change.

**CONCLUSION**

The Board finds that appellant abandoned her request for a hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 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