

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

D.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

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**Docket No. 12-218
Issued: June 12, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 10, 2011 appellant timely appealed the October 27, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), finding that he abandoned his request for an oral hearing. The most recent merit decision was issued on April 27, 2011, more than 180 days prior to the filing of this appeal. 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 nonmerit decision.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² For final adverse OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e). Therefore, appellant would have 180 days from April 27, 2011 or until Monday, October 24, 2011. As he filed his claim on November 10, 2011, the Board has no jurisdiction to review the April 27, 2011 merit decision.

FACTUAL HISTORY

On July 20, 2010 appellant, then a 53-year-old city letter carrier, claimed that he sustained injuries to the his head, neck, back and left side when he was struck by a falling storm door window causing him to fall. He stopped work on July 15, 2010 and returned on July 19, 2010.

By decision dated April 27, 2011, OWCP denied appellant's claim. It found that the medical evidence did not establish a medical condition related to the accepted incident.

On May 24, 2011 appellant requested a hearing. He also submitted additional evidence.

On August 17, 2011 OWCP notified appellant in writing that a hearing was scheduled for September 20, 2011 at 9:45 a.m. It provided the address of the hearing location and the notice was mailed to appellant's address of record.

Appellant did not appear at the scheduled hearing.

By decision dated October 27, 2011, OWCP found that appellant abandoned his requested hearing. The decision noted that the hearing was scheduled for September 20, 2011, but he failed to appear as instructed. The decision also found that there was no indication that appellant contacted OWCP prior or subsequent to the scheduled hearing to explain his failure to participate. OWCP concluded that appellant abandoned his hearing request.

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.³ Unless otherwise directed in writing by the claims examiner, 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.⁴ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁵

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

³ *Id.* at § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁴ 20 C.F.R. § 10.617(b).

⁵ *See Michelle R. Littlejohn*, 42 ECAB 463 (1991).

decision finding that the claimant has abandoned his or her request for a hearing and return the case to the district OWCP.⁶

ANALYSIS

By decision dated April 27, 2011, OWCP denied appellant's traumatic injury claim. Appellant timely requested a hearing. In an August 17, 2011 letter, OWCP notified appellant of the time and location for the September 20, 2011 scheduled hearing. The notice was mailed to his address of record. Appellant did not appear at the appointed time. He did not request a postponement of the hearing or explain his failure to appear at the hearing within 10 days of the scheduled hearing date of September 20, 2011. The Board, therefore, finds that appellant abandoned his request for a hearing.

On appeal, appellant contends that he did not abandon his hearing. He stated that his daughter had a medical problem and his attorney made an appearance. The Board notes that the record does not contain any evidence to suggest that appellant contacted OWCP within the allotted time to alert them of a medical problem or that an authorized attorney entered an appearance on his behalf. Appellant also requested that his case be processed on its merits. However, as noted, the Board has no jurisdiction to review the merits of his claim.⁷

CONCLUSION

The Board finds that OWCP properly found that appellant abandoned his request for a hearing.

⁶ 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).

⁷ *See supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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