

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

---

**J.P., Appellant**

**and**

**DEPARTMENT OF JUSTICE, FEDERAL  
CORRECTIONAL INSTITUTION,  
Seagoville, TX, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-1707  
Issued: December 14, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 12, 2007 appellant filed a timely appeal of an October 16, 2006 decision of the Office of Workers' Compensation Programs, finding that he had abandoned his request for an oral hearing. Since more than one year has elapsed between the merit decision on May 19, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2) and 501.6(c) and (d).

**ISSUE**

The issue is whether the Office properly determined that appellant abandoned his request for an oral hearing.

**FACTUAL HISTORY**

Appellant filed a claim for an emotional condition causally related to factors of his federal employment as a correctional officer supervisor. By decision dated May 19, 2006, the

Office denied the claim for compensation, finding that appellant had not established any compensable work factors.

On June 19, 2006 appellant requested an oral hearing before an Office hearing representative. He indicated that he was open to the option of a teleconference. By letter dated August 24, 2006, the Office advised appellant that a telephonic hearing was scheduled for October 2, 2006 at 10:00 a.m. Eastern Standard Time. The telephone number and access code were provided. Appellant was advised that the hearing could not be postponed unless the hearing representative could reschedule the hearing on the same docket.

By decision dated October 16, 2006, the Office stated that appellant failed to appear for the telephone hearing scheduled on October 2, 2006. The Office found that there was no evidence appellant contacted the Office to explain his failure to appear, and under these circumstances, the hearing request was deemed to be abandoned.

### **LEGAL PRECEDENT**

A claimant who has received a final adverse decision by the Office 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.<sup>1</sup> Unless otherwise directed in writing by the claimant, the Office 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>2</sup> Chapter 2.1601.6(e) of the Office's procedure manual, dated January 1999, provides as follows:

*“e. Abandonment of Hearing Requests.*

(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 date of the hearing.

Under these circumstances, H&R [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 DO [district Office]. In cases involving precoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.”

---

<sup>1</sup> 20 C.F.R. § 10.616(a).

<sup>2</sup> 20 C.F.R. § 10.617(b).

### **ANALYSIS**

The Office provided appellant notification on August 24, 2006 of a telephonic hearing to be held on October 2, 2006 at 10:00 a.m. Eastern Time. Since the notice was more than 30 days prior to the scheduled hearing, the Office complied with the requirements of 20 C.F.R. § 10.617(b). The issue is whether the Office properly found that appellant had abandoned his request for a hearing.

The evidence of record indicated that appellant did not telephone the Office hearing representative as directed on October 2, 2006 at the scheduled time. Moreover, there is no indication that appellant attempted to postpone the hearing prior to the scheduled time, nor did he provide any notification to the Office within 10 days of October 2, 2006 explaining his failure to telephone the Office hearing representative.

Based on the evidence of record, therefore, the three requirements for abandonment have met in the present case: Appellant did not request a postponement, failed to contact the Office at the time of the scheduled hearing, and failed to provide notification for such failure within 10 days of the scheduled hearing. Accordingly, the Board finds the Office properly found appellant had abandoned his request for a hearing.

### **CONCLUSION**

The Office properly found that appellant abandoned his request for a hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 16, 2006 is affirmed.

Issued: December 14, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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