

FACTUAL HISTORY

On April 27, 2005 appellant, then a 38-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained moderate right elbow pain with tingling and numbness in the fingers of his right hand on or before January 15, 2005. Appellant did not stop work.

In a May 20, 2005 letter, the Office advised appellant of the factual and medical evidence needed to establish his claim. The Office requested a detailed description of the work activities alleged to have caused or contributed to the claimed condition. The Office emphasized the need to submit a rationalized report from his attending physician explaining how and why the identified work factors caused the claimed condition. In response, appellant submitted a May 5, 2005 report diagnosing right lateral epicondylitis. The signature of the healthcare provider is illegible.

By decision dated July 20, 2005, the Office denied appellant's claim on the grounds that fact of injury was not established.

On August 19, 2005 appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review. In a July 28, 2006 letter, the Office advised appellant that a hearing would be held on September 13, 2006 at 10:30 a.m. in the Reuss Federal Building in Milwaukee. The date was written as "09/13/2006."

By decision dated September 28, 2006, the Office found that appellant had abandoned his request for a hearing. The Office noted that the hearing was scheduled in Milwaukee on September 13, 2006 and appellant received written notification of the hearing 30 days in advance of the hearing. However, appellant failed to appear and there was no evidence of record that he contacted the Office either prior or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."

With respect to abandonment of hearing requests, Chapter 2.1601.6.e of 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 date of the hearing.

“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]...”¹

ANALYSIS

In a July 20, 2005 decision, the Office denied appellant’s claim for a right elbow injury. Appellant timely requested an oral hearing. In a July 28, 2006 letter, the Office notified appellant that an oral hearing was to be held on September 13, 2006. On appeal, appellant acknowledged that he failed to attend the scheduled hearing. He explained that he thought the hearing was on September 18, 2006 when he looked at it and not September 13, 2006. “The three looked like an eight.” The Board notes that the scanned copy of the Office’s July 28, 2006 letter contained in the record is clear and legible, including the date “09/13/2006.” As noted, appellant must provide an explanation for his failure to appear within 10 days of the September 13, 2006 hearing. But there is no evidence of record that he explained his failure to appear at the scheduled hearing within 10 days of September 13, 2006.

The evidence establishes that appellant did not request a postponement of the hearing, failed to appear at the hearing and failed to provide adequate explanation for his failure to appear within 10 days. The Board therefore finds that appellant abandoned his request for a hearing in this case.

CONCLUSION

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

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999). See also *Chris Wells*, 52 ECAB 445 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2006 is affirmed.

Issued: May 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