

September 9, 2000. Appellant filed a recurrence of disability claim on January 21, 2001 alleging a recurrence of total disability on that date. She filed an additional occupational disease claim on February 26, 2001 alleging a rotator cuff tear in the left shoulder. The Office expanded appellant's claim to include a left rotator cuff tear and authorized surgery on April 12, 2001. On May 3, 2001 appellant underwent an open acromioplasty of the left shoulder with a repair of a full thickness rotator cuff tear and excision of the distal clavicle. In a letter dated March 9, 2006, the Office also accepted that appellant sustained employment-related disc herniations at C4, C5 and C6.

On January 25, 2001 appellant filed a second traumatic injury claim alleging that she injured her right wrist on December 29, 2000 when she attempted to grab a package and bent backward and twisted her wrist. The Office accepted that she sustained a right wrist sprain on July 11, 2001. It authorized right wrist arthroscopy on April 23, 2003. Appellant filed a notice of recurrence of disability due to a December 29, 2000 wrist injury on April 30, 2003. On May 6, 2003 she underwent a radiocarpal and midcarpal arthroscopy of the right wrist with debridement of the triangular fibrocartilage complex central tear as well as arthroscopic thermal capsulorrhaphy of a lax scapholunate interosseous ligament and complete synovectomy. Appellant underwent surgical removal of the hardware in her left wrist on May 6, 2004.

On April 29, 2005 appellant requested a schedule award. In a letter dated January 31, 2007, the Office requested a detailed medical report discussing the extent of her permanent impairment due to her accepted employment injuries.

By decision dated March 13, 2007, the Office denied appellant's claim for a schedule award finding that she had not submitted sufficient medical opinion evidence to establish that she had reached maximum medical improvement or a detailed description of her impairment in accordance with the A.M.A., *Guides*.²

Appellant requested a telephonic hearing on April 8, 2007 and listed her house address. She submitted additional medical evidence.³ In a letter dated August 21, 2007 and properly addressed to appellant's house address, the Branch of Hearings and Review informed her that her telephonic hearing was scheduled for October 10, 2007 at 11:45 eastern time.

By decision dated October 24, 2007, the Branch of Hearings and Review found that appellant failed to appear at the scheduled telephonic hearing. The hearing representative found that she had not contacted the Office prior to or subsequent to the scheduled hearing to explain her failure to appear. The Branch of Hearings and Review found that appellant had abandoned her request for a hearing.

² In a letter dated December 5, 2007, appellant requested reconsideration of the Office's March 13, 2007 schedule award decision. This letter predates the December 18, 2007 appeal to the Board.

³ Following the Office's March 13, 2007 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

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.⁴ 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.⁵ The Office has the burden of proving that it mailed to appellant and her representative a notice of a scheduled hearing.⁶

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the 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 prerecoumpment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

“This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”⁷

⁴ 20 C.F.R. § 10.616(a).

⁵ 20 C.F.R. § 10.617(b). Office procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

⁶ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

ANALYSIS

The Office issued a decision on March 13, 2007 denying appellant's requested schedule award. Appellant requested a hearing before an Office hearing representative regarding this matter on April 8, 2007 and it was scheduled for October 10, 2007.

The Office scheduled a telephonic oral hearing before an Office hearing representative at a specific time on October 10, 2007. The record shows that the Office mailed appropriate notice to the claimant at her last known address. The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.

CONCLUSION

The Board finds that the Branch of Hearings and Review properly concluded that appellant had abandoned her request for a telephonic oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2008
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