

FACTUAL HISTORY

On April 17, 2010 appellant, then a 54-year-old mail processing clerk, fell to the floor and injured his lower back and left shoulder while in the performance of duty. OWCP accepted his traumatic injury claim for back contusion and shoulder, upper arm and lumbar sprains and later expanded it to include left rotator cuff tendinitis.²

OWCP referred appellant to Dr. Raju M. Vanapalli, a Board-certified orthopedic surgeon, for a second opinion examination regarding the extent of his disability. In a May 17, 2011 report, Dr. Vanapalli reviewed the April 27, 2011 statement of accepted facts and medical file. Following a physical examination of the left upper extremity and back, he determined that appellant's work-related injuries resolved. Dr. Vanapalli concluded that appellant was capable of performing his regular employment without restrictions. By decision dated September 21, 2011, OWCP found Dr. Vanapalli's opinion to constitute the weight of the evidence and terminated appellant's disability compensation effective September 25, 2011.

On October 16, 2011 appellant requested a telephonic hearing.

In a January 4, 2012 notice mailed to appellant's address of record, an OWCP hearing representative scheduled a telephonic hearing for 2:00 p.m. on February 14, 2012 and provided the telephone number and pass code for accessing the proceeding. She further advised that postponement would only be permitted if the hearing could be rescheduled on the same monthly docket or if appellant furnished documentation showing nonelective hospitalization or the death of a spouse, parent or child prevented his attendance.

On March 15, 2012 an OWCP hearing representative found that appellant failed to appear at the hearing, did not contact OWCP prior or subsequent to the hearing to explain his nonappearance and therefore abandoned his 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, an OWCP 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

² The foregoing information was incorporated into the April 27, 2011 statement of accepted facts.

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

⁴ 20 C.F.R. § 10.617(b).

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

A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.⁶

Where it has been determined that a claimant has abandoned his or her request for a hearing, OWCP's Branch of Hearings and Review will issue a formal decision.⁷

ANALYSIS

OWCP's Branch of Hearings and Review scheduled a telephonic hearing on February 14, 2012. Written notice that provided the time of the hearing as well as the telephone number and pass code needed to access the proceeding was properly addressed and duly mailed on January 4, 2012.⁸ Appellant did not call at the appointed time and did not request another hearing within 10 days of the scheduled hearing date. In view of these circumstances, OWCP properly found that he abandoned his hearing request.

Appellant contends on appeal that he was entitled to a referee examination. The Board's jurisdiction, however, is limited to the question of whether he abandoned his hearing request.

CONCLUSION

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

⁶ 20 C.F.R. § 10.622(f).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁸ See *Newton D. Lashmet*, 45 ECAB 181 (1993).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 1, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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