

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

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<b>BARBARA A. STEWART-JACKSON, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 04-945</b>
	)	<b>Issued: July 7, 2004</b>
<b>U.S. POSTAL SERVICE, CARRIER ANNEX, Bloomfield Hills, MI, Employer</b>	)	
	)	
	)	

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*Appearances:*  
*Barbara A. Stewart-Jackson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On February 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated November 25, 2003, which found that she had abandoned her request for a hearing. As more than one year has elapsed between the merit decision dated January 22, 2003 from which appellant requested a hearing and the filing of this appeal on February 27, 2004 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly found that appellant abandoned her request for a hearing. On appeal appellant requested review of the information submitted on appeal and that a new date be set for a hearing.<sup>1</sup>

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<sup>1</sup> The Board notes the record contains additional evidence which was not before the Office at the time it issued its January 22, 2003 decision and appellant submitted new evidence with her appeal to the Board. However, the Board cannot consider new evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422 (1997).

## **FACTUAL HISTORY**

On December 4, 2002 appellant, 50-year-old mail processing clerk, filed a traumatic injury claim alleging that sustained pain in her wrist, arms, fingers and lower back while pushing a 1,000 to 2,000 pound case loaded with equipment.

By decision dated January 22, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that a medical condition resulted from the accepted incident.

By letter dated January 31, 2003, appellant requested a hearing on the January 22, 2003 decision. In a letter dated February 12, 2003, the Office acknowledged receipt of appellant's request for an oral hearing and requested additional information as it could not locate a compensation claim file relating to appellant. Appellant subsequently provided the information relevant to her claim and, in a March 24, 2003 letter, provided procedural information regarding the hearing. On October 20, 2003 the Office sent a notice of hearing to appellant that a hearing would be held on Thursday, November 20, 2003 at 10:45 a.m. Appellant did not appear for the proceeding.

By decision dated November 25, 2003, the Office determined that appellant had abandoned her request for a hearing, as appellant received notice 30 days in advance but did not appear and she did not contact the Office prior to the hearing or within 10 days after the hearing to explain her failure to appear.

## **LEGAL PRECEDENT**

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]....

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [the Branch of Hearings and Review] 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 [the Branch of Hearings and Review] 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.”<sup>2</sup>

### **ANALYSIS**

In finding that appellant abandoned her January 31, 2003 request for a hearing, the Office determined that a hearing had been scheduled in Detroit on November 20, 2003; that appellant received written notification of the hearing 30 days in advance; that she failed to appear for the hearing and that the record contained no evidence that she contacted the Office to explain her failure to attend the hearing. Appellant has not provided any argument as to why she did not appear at the hearing.

The record establishes that appellant did not request postponement of the hearing date, failed to appear at the scheduled hearing and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the criteria for abandonment as specified in Chapter 2.1601.6(e) of the Office’s 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 Office properly determined that appellant abandoned her request for a hearing.

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also Claudia J. Whitten*, 52 ECAB 483, 484-85 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 25, 2003 is affirmed.

Issued: July 7, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member