

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

JERRY F. HICKS, Appellant

and

**DEPARTMENT OF THE ARMY, COMMAND
SAFETY, Fort Campbell, KY, Employer**

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**Docket No. 05-468
Issued: May 5, 2005**

Appearances:
Jerry F. Hicks, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On December 20, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 7, 2004 nonmerit decision finding that he abandoned his request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's September 24, 2003 decision denying his claim for an employment-related hearing loss. Because more than one year has elapsed between the last merit decision and the filing of this appeal on December 20, 2004, the Board lacks jurisdiction to review the merits of this claim.¹

ISSUE

The issue is whether appellant abandoned his request for an oral hearing before an Office hearing representative.

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On January 13, 2003 appellant, then a 56-year-old electrician, filed an occupational disease claim alleging that he sustained a hearing loss due to noise from machines, engines and sirens at work.

Appellant submitted several audiograms reporting the findings of testing performed by the employing establishment. The record was supplemented to contain documents detailing the level of noise in appellant's workplace.

Appellant was referred to Phillip Klapper, a Board-certified otolaryngologist, for an examination of his hearing. In a September 11, 2003 report, Dr. Klapper diagnosed presbycusis but determined that the condition was not caused by exposure to noise in the workplace.

By decision dated September 24, 2003, the Office denied appellant's schedule award claim on the grounds that his claimed hearing loss was not related to employment factors.

On October 22, 2003 appellant requested an oral hearing before an Office hearing representative. By notice dated March 29, 2004, appellant was advised that an oral hearing was scheduled to take place on May 3, 2004 at 12:45 p.m. in Nashville, TN.² Appellant did not appear for the hearing at the scheduled time.

By decision dated June 7, 2004, the Office determined that appellant abandoned the oral hearing.

LEGAL PRECEDENT

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 prerecoupment 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 The Office mailed the notice to appellant's last known address.

“(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.”³

ANALYSIS

The Office scheduled an oral hearing before an Office hearing representative at a specific time and place on May 3, 2004. The record shows that the Office mailed appropriate notice to the claimant at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he 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’s procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.⁴

CONCLUSION

The Board finds that appellant abandoned his request for an oral hearing before an Office hearing representative.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

⁴ See also *Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 7, 2004 decision is affirmed.

Issued: May 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member