

on June 2, 2004. On July 15, 2004 the Office accepted the claim for a lumbosacral strain and paid appropriate benefits. The employing establishment controverted entitlement to continuation of pay as medical documentation from her physician dated June 21, 2004 had indicated a new work injury on June 16, 2004 and the time lost from June 16, 2004 to at least July 19, 2004 could be a result of the new injury. The Office requested that appellant provide a clarifying statement as to the events of June 16, 2004 and medical documentation explaining how any time lost from work beginning June 16, 2004 was related primarily to the May 26, 2004 accepted work injury.

By decision dated August 19, 2004, the Office denied appellant's claim for continuation of pay for the period June 16 to July 19, 2004 as the disability was not the result of the May 26, 2004 accepted work injury.

On September 9, 2004 appellant requested a hearing of the August 19, 2004 decision before the Office Branch of Hearings and Review.

In a letter dated October 28, 2004, the Office acknowledged receipt of appellant's request for an oral hearing. On June 15, 2005 the Office sent a notice of hearing to appellant. The notice stated that a hearing would be held on July 18, 2005 at 9:15 a.m. in Cleveland, Ohio. Appellant did not appear for the hearing.

By decision dated August 4, 2005, the Office found that appellant had abandoned her request for a hearing since she failed to appear. The Office noted that appellant was provided written verification 30 days prior to the date of the hearing, that she failed to appear. The record contained no evidence that appellant contacted the Office either prior to the scheduled hearing or subsequently to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

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.”²

ANALYSIS -- ISSUE 1

In finding that appellant abandoned her September 9, 2004 request for a hearing, the Office noted that a hearing had been scheduled in Cleveland, Ohio on July 18, 2005. Appellant received written notification of the hearing 30 days in advance but failed to appear for the hearing. The record contains no evidence that appellant contacted the Office to reschedule the hearing or explain her failure to attend the hearing.

The Board finds that the record contains no evidence that appellant requested postponement of the hearing. She failed to appear at the scheduled hearing and did not provide any notification for such failure within 10 days of the scheduled hearing. As this meets the criteria for abandonment as specified in Chapter 2.1601.6(e) of the Office’s procedure manual, the Board finds 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 an oral hearing.

² 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 August 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board