

FACTUAL HISTORY

The Office accepted that on August 31, 2004 appellant, then a 50-year-old file clerk trainee, sustained a sprain/strain of the carpometacarpal joint of the left thumb while being fingerprinted in the performance of duty.

On September 12, 2005 appellant claimed a recurrence of disability from September 8 to 11, 2005. She attributed her symptoms to frequent use of her left hand at work following the accepted left thumb strain.

In a November 23, 2005 letter, the Office advised appellant of the additional evidence needed to establish her claim. Appellant then submitted medical evidence. An Office medical adviser reviewed the medical record on February 15, 2006 and opined that the accepted left thumb strain should have resolved within four to six weeks.¹

By decision dated March 2, 2006, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. The Office found that appellant submitted insufficient rationalized medical evidence to meet her burden of proof.

In a letter postmarked March 27, 2006, appellant requested an oral hearing. She submitted medical records and excerpts from medical literature.

In an October 11, 2006 notice, the Office advised appellant that a hearing would be held in her case on November 21, 2006 at 1:00 p.m. at the federal court house in Wichita, Kansas. The notice was sent to appellant at her address of record.

On form dated and received November 16, 2006, appellant requested that a copy of the hearing transcript be sent to her. The record indicates that appellant did not contact the Office or submit additional evidence prior to the issuance of the December 7, 2006 decision.

By decision dated December 7, 2006, the Office found that appellant abandoned her request for a hearing. The Office found that a hearing had been scheduled on November 21, 2006. Appellant failed to appear although she received written notice of the hearing 30 days in advance. The Office further found that appellant did not contact the Office before or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."

¹ In December 2005, the Office processed appellant's change of address from 111 West 17th Street to 225 W 15th Street in the same city in Kansas.

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

ANALYSIS

By decision dated March 2, 2006, the Office denied appellant's claim for a recurrence of disability related to an accepted left thumb injury. Appellant timely requested an oral hearing. In an October 11, 2006 letter, the Office notified appellant that an oral hearing was to be held on November 21, 2006. On appeal, she asserted that she failed to attend the scheduled hearing or timely request a postponement as she was ill from cancer treatment. As noted, appellant must provide an explanation for her failure to appear within 10 days of the November 21, 2006 hearing. But there is no evidence of record that she explained her failure to appear at the scheduled hearing within 10 days of November 21, 2006.

Although appellant asserts that she was too ill to timely contact the Office, the Board notes that appellant submitted a form on November 16, 2006, five days before the scheduled hearing. However, appellant did not request a postponement or otherwise indicate that she could not attend the scheduled hearing.

The evidence establishes that appellant did not request a postponement of the hearing, failed to appear at the hearing and failed to provide adequate explanation for her failure to appear within 10 days. The Board therefore finds that appellant abandoned her request for a hearing in this case.

CONCLUSION

The Board finds that the Office properly found that appellant abandoned her request for a 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 *Chris Wells*, 52 ECAB 445 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2006 is affirmed.

Issued: August 16, 2007
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