

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

R.J., claiming as administratrix of R.J., Appellant)	
)	
and)	Docket No. 07-1235
)	Issued: September 20, 2007
U.S. POSTAL SERVICE, OLD HAMMOND)	
POST OFFICE, Baton Rouge, LA, Employer)	
)	

Appearances:
Johnnie A. Jones, Sr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 4, 2007 appellant filed an appeal of a December 26, 2006 decision of the Office of Workers' Compensation Programs finding that the employee abandoned his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. As the most recent merit decision of record was a December 22, 2004 decision denying the employee's occupational disease claim, more than one year old, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

The issue is whether the Office properly found that the employee abandoned his request for a hearing.

FACTUAL HISTORY

On December 24, 2003 the employee,¹ then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained left leg pain on or before October 1, 2003 due to the strain of carrying a mail satchel. He stopped work on December 8, 2003. The employee submitted reports dated from October to December 2003 from Dr. Tulsi N. Bice, an attending Board-certified physiatrist, who diagnosed left S1 joint syndrome, lumbar degeneration and degenerative disease of the right acromioclavicular joint. Dr. Bice did not address causal relationship in these reports.

In an October 22, 2004 letter, the Office advised the employee of the type of additional medical and factual evidence needed to establish his claim. The Office emphasized the importance of submitting a report from the employee's attending physician explaining how and why carrying a mailbag at work would cause the claimed condition.

By decision dated December 22, 2004, the Office denied the employee's claim on the grounds that causal relationship was not established. The Office found that appellant submitted insufficient rationalized medical evidence to establish that the accepted work factor of carrying a mail satchel caused the claimed condition.

In a December 27, 2004 letter postmarked on January 19, 2005, the employee requested an oral hearing.

In an October 30, 2006 notice, the Office advised the employee that a hearing would be held in his case on November 29, 2006 at a federal building in New Orleans, Louisiana. The notice was sent to the employee at his address of record.

By decision dated December 26, 2006, the Office found that the employee abandoned his request for a hearing. The Office found that a hearing had been scheduled on November 29, 2006. The employee failed to appear although he received written notice of the hearing 30 days in advance. The Office further found that the employee did not contact the Office before or after the scheduled hearing to explain his 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 Documents submitted on appeal indicate that the employee passed away between December 26, 2006 and April 4, 2007. However, the employee's date of death is not of record. Appellant was appointed administratrix of the employee's estate on July 10, 2007.

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 December 22, 2004 decision, the Office denied the employee's occupational disease claim. The employee timely requested an oral hearing. In an October 30, 2006 letter, the Office notified the employee that an oral hearing was to be held on November 29, 2006. As noted, the employee must provide an explanation for his failure to appear within 10 days of the November 29, 2006 hearing. But there is no evidence of record that he explained his failure to appear at the scheduled hearing within 10 days of November 29, 2006.

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

CONCLUSION

The Board finds that the Office properly found that the employee abandoned his 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 26, 2006 is affirmed.

Issued: September 20, 2007
Washington, DC

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

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