

FACTUAL HISTORY

On October 20, 2005 appellant, then a 30-year-old postal clerk, filed an occupational disease claim alleging that he sustained tendinitis due to repetitive motion and keyboarding. He stopped work on September 21, 2005 and returned to a reassigned position on October 11, 2005.

By decision dated December 6, 2005, the Office denied appellant's claim on the grounds that he did not establish the employment exposure occurred as alleged. It noted that he did not respond to its request for additional factual information. On December 26, 2005 appellant requested an oral hearing. Following a preliminary review of the case, the Office hearing representative reversed the December 6, 2005 decision and accepted that he sustained bilateral wrist tendinitis causally related to factors of his federal employment.

On December 7, 2006 the Office notified appellant that it had accepted his claim for resolved bilateral wrist tendinitis. On January 30, 2007 appellant filed a notice of recurrence of disability beginning July 9, 2006 causally related to his accepted work injury. He stopped work on July 10, 2006 and returned to work on July 31, 2006.

By decision dated March 28, 2007, the Office found that appellant had not established that he sustained an employment-related recurrence of disability. On April 22, 2007 appellant requested an oral hearing. On May 4, 2007 it acknowledged his request for an oral hearing and informed him that it would be docketed for a hearing in six to eight months.

In a letter dated February 12, 2008, the Office notified appellant that a telephonic hearing on his case would be held on March 17, 2008 at 1:30 p.m. eastern time.

By decision dated April 1, 2008, the Office found that appellant had abandoned his request for an oral hearing. It noted that there was no indication that he notified the Office either before or after the hearing to explain his failure to telephone at the scheduled time for his hearing.

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) provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary [of Labor] under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [his] claim before a representative of the Secretary."

With respect to abandonment of hearing requests, Chapter 2.1601.6(e) of the Office's procedure manual provides in relevant part:

"e. Abandonment of Hearing Request.

- (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 28, 2007, the Office found that appellant had not established that he sustained a recurrence of disability due to his accepted employment injury. Appellant timely requested an oral hearing. In a February 12, 2008 letter, it notified appellant that a telephonic hearing was scheduled for 1:30 p.m. eastern time on March 17, 2008. He did not telephone at the appointed time or request a postponement of the hearing.³ Appellant further did not explain his failure to appear at the hearing within 10 days of the scheduled hearing date of February 12, 2008.⁴ As this meets the criteria for abandonment specified in the Office procedure manual, the Board finds that the Office properly determined that he abandoned his request for an oral hearing.⁵

On appeal, appellant argued that he misplaced his written notice of the telephonic hearing and did not locate it in time to realize that the telephonic call was scheduled for eastern time rather than pacific time. He asserted that he telephoned the hearing representative and left her a message requesting that another hearing be scheduled. Appellant also telephoned the Office but only contacted voicemail. There is no evidence in the case record, however, showing that appellant telephoned the hearing representative or the Office on or within 10 days of March 17, 2008 and explained his failure to appear.⁶

CONCLUSION

The Board finds that appellant abandoned his request for a telephonic 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 G.J.*, 58 ECAB ___ (Docket No. 07-1028, issued August 16, 2007).

³ Appellant was directed to call a toll-free number a few minutes before 1:30 p.m., eastern time, on February 12, 2008, but there is no evidence that he did so or otherwise made himself available for the scheduled telephonic hearing.

⁴ *Id.*

⁵ *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁶ Appellant submitted new evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). He can submit this evidence to the Office and requested reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 1, 2008 is affirmed.

Issued: December 11, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board