

FACTUAL HISTORY

On July 7, 2004 appellant, then a 41-year-old casual clerk, filed a traumatic injury claim alleging that she injured her left shoulder on that date moving letter trays. The Office accepted the claim for neck, thoracic spine and left shoulder strains.

The Office referred appellant for vocational rehabilitation in December 2004. By decision dated April 14, 2006, the Office reduced her compensation for failing to participate in vocational rehabilitation as directed under 5 U.S.C. §§ 8113(b) and 8104. The Office reduced appellant's compensation based on its finding that she would have had the capacity to earn wages as a receptionist had she cooperated with vocational rehabilitation.

On May 13, 2006 appellant requested an oral hearing. In a December 4, 2006 letter, the Office advised her that a hearing would be held on January 25, 2007 at 2:00 p.m. in Sacramento, California. The Office sent the notice to appellant's address of record.

By decision dated December 4, 2006, the Office found that appellant had abandoned her request for an oral hearing as she failed to appear at the hearing and failed to contact the Office either before or after the 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) 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 [her] 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:

"(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

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).

ANALYSIS

By decision dated April 14, 2006, the Office reduced appellant's compensation based on its finding that she should have earned wages as a receptionist had she participated in vocational rehabilitation. Appellant timely requested an oral hearing. In a December 4, 2006 letter, the Office notified her that an oral hearing was scheduled for January 25, 2007. Appellant did not request a postponement of the hearing or attend the hearing. She further did not explain her failure to appear at the hearing within 10 days of the scheduled hearing date of January 25, 2007.³ The Board therefore finds that appellant abandoned her request for a hearing.

On appeal, appellant submitted an undated letter explaining her failure to appear at the hearing. She asserted that she was unable to enter the courthouse because she lacked valid identification. The Board, however, lacks jurisdiction to consider this evidence as it was not before the Office at the time of its February 16, 2007 decision.⁴

CONCLUSION

The Board finds that the Office properly determined that appellant abandoned her request for an oral hearing.

³ *Id.*

⁴ *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 16, 2007 is affirmed.

Issued: January 29, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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