

FACTUAL HISTORY

The Office accepted that on December 13, 2001 appellant, then a 53-year-old entity control clerk, sustained a strain of her right shoulder and upper arm and a right rotator cuff tear. It paid compensation for periods of disability.² Appellant returned to work for the employing establishment as a modified clerk and on March 18, 2008 the Office reduced her compensation based on her actual wages as a modified clerk.

On March 28, 2008 the Office made a preliminary determination that appellant received a \$4,974.80 overpayment of compensation. On April 17, 2008 appellant requested a telephone precoupment hearing with an Office hearing representative regarding the claimed overpayment.³

In a July 11, 2008 notice, the Office hearing representative advised appellant that a telephone hearing would take place at 2:00 p.m. Eastern Time on August 13, 2008. Appellant was provided with a toll-free number to call shortly before the scheduled hearing time. The notice was sent to appellant's address in: St. George, UT.⁴ Appellant did not appear for the telephone hearing scheduled for August 13, 2008.⁵

In an August 29, 2008 decision, the Office found that appellant abandoned her request for a hearing with an Office hearing representative. It indicated that she did not request postponement, that she failed to appear for the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

LEGAL PRECEDENT

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

“(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

² The Office authorized appellant to undergo right rotator cuff repair surgery.

³ On an overpayment questionnaire form completed on April 7, 2008 appellant listed her address in St. George, UT 84770.

⁴ The notice advised appellant regarding the procedures for requesting postponement of the hearing.

⁵ In a memorandum of an August 19, 2008 telephone call with appellant, an Office official stated, “Her current mailing address is in Ogden, UT (temporary until she gets a decision on her appeal).” In an August 21, 2008 decision, the Office determined that appellant received a \$4,974.80 overpayment of compensation and found that the overpayment was not subject to waiver.

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, H&R [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 DO [district Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R 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 H&R 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.”⁶

ANALYSIS

The Office, via a notice dated July 11, 2008, advised appellant that it had scheduled a telephonic hearing for her with an Office hearing representative at a specific date and time, *i.e.*, 2:00 p.m. Eastern Time on August 13, 2008. The record shows that the Office mailed appropriate notice to the claimant at her last known address.⁷ The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.⁸ As this meets the conditions for abandonment specified in the Office’s procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.⁹

CONCLUSION

The Board finds that appellant abandoned her request for a hearing with an Office hearing representative.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999). The procedures for requesting postponement of a hearing are found at 5 C.F.R. § 10.622(b), (c). Prerecoupment hearings are conducted in the same manner as hearings provided under sections 10.615 to 10.622. 20 C.F.R. § 10.439.

⁷ The notice was sent to appellant’s address in: St. George, UT. She first advised the Office on August 19, 2008 that she moved in Ogden, UT.

⁸ Appellant contacted the Office on August 19, 2008 but did not discuss her failure to appear for the hearing scheduled for August 13, 2008.

⁹ See also *Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 29, 2008 decision is affirmed.

Issued: June 17, 2009
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