



## **FACTUAL HISTORY**

On February 18, 1994 appellant, then a 48-year-old casual employee, sustained an employment-related closed fracture of the upper end of her right humerus and other affections of her right shoulder region. In November 25, 2002 and April 29, 2004 decisions, the Office granted her schedule award compensation for a 32 percent permanent impairment of her right arm.

In a form received by the Office on June 14, 2007, appellant requested a hearing before an Office hearing representative. In a May 13, 2008 notice, the Office advised her that a telephone hearing was scheduled with an Office hearing representative at 9:30 a.m. eastern time on June 16, 2008. Appellant was provided with a toll-free telephone number to call at that time.<sup>2</sup> She did not request postponement of the hearing, failed to appear for the scheduled hearing by calling as directed and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

In a July 2, 2008 decision, the Office determined that appellant abandoned her request for a 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 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 precoupment 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.

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<sup>2</sup> The notice was mailed to appellant's address of record. A postmarked envelope shows that the notice was mailed on May 14, 2008.

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.”<sup>3</sup>

It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>4</sup> This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.<sup>5</sup> The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.<sup>6</sup>

### **ANALYSIS**

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on June 16, 2008. The record shows that the Office mailed appropriate notice to the claimant at her last known address.<sup>7</sup> 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. 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.<sup>8</sup>

### **CONCLUSION**

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

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

<sup>4</sup> *George F. Gidicsin*, 36 ECAB 175, 178 (1984).

<sup>5</sup> *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

<sup>6</sup> *Larry L. Hill*, 42 ECAB 596, 600 (1991).

<sup>7</sup> On appeal appellant alleged that she did not receive notice of the hearing scheduled for June 16, 2008. However, it is presumed that she received the May 13, 2008 hearing notice because the notice was properly addressed and duly mailed. There is no evidence in the record to rebut this presumption. *See supra* notes 4 through 6 and accompanying text.

<sup>8</sup> *See also Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 2, 2008 decision is affirmed.

Issued: May 18, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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