

FACTUAL HISTORY

On January 12, 1990 appellant a 59-year-old postal employee, claimed she sustained an injury in the performance of duty. The Office accepted appellant's claim for lumbar sprain. On February 25, 2008 appellant alleged she sustained a recurrence of medical condition.

By decision dated April 22, 2009, the Office denied the claim because the evidence of record did not establish that her alleged condition was causally related to her accepted employment injury.²

By letter dated April 24, 2009, appellant advised the Office that she had married and that she had moved and provided her new address.

On May 15, 2009 appellant requested an oral hearing.

By letter dated July 14, 2009, the Office notified appellant that an oral hearing was scheduled for August 31, 2009, at 9:00 A.M. It notified her of the location of the hearing and advised her to be present. This notice of hearing was mailed to appellant at her new address.

Appellant did not attend the hearing and provided no excuse for her absence.

By decision dated September 16, 2009, the Office hearing representative found appellant abandoned her hearing request because she failed to attend the hearing and did not contact the Office prior or subsequent to the hearing to explain her failure to participate.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.³ Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁴ The Office has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.⁵

² The record reflects the Office issued its initial decision on March 17, 2009. After appellant notified the Office that she did not receive the decision and requested it send another copy to her new mailing address, on April 22, 2009, the Office reissued its decision. The record reflects that the copy of its March 17, 2009 decision was returned as undeliverable.

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b). Office procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

⁵ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

The authority governing abandonment of hearings rests with the Office's procedure manual,⁶ which provides as follows:

"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."⁷

ANALYSIS

The record establishes that, on July 14, 2009, responding to appellant's request for an oral hearing, the Office mailed an appropriate notice of the scheduled August 31, 2009 hearing. This notice was properly addressed to appellant at her new address of record. The Board notes that the notice was sent more than 30 days prior to the hearing and that there is no contention that appellant did not receive it. The issue is, thus, whether the Office properly found appellant abandoned her hearing request.

The record establishes that appellant failed to appear at the scheduled August 31, 2009 hearing, as instructed. On appeal, appellant alleges that she left a voice mail with the Office indicating a conflict in her schedule. The record contains no evidence that appellant contacted the Office seeking postponement or inquiring on the status of her hearing request. The record contains no evidence that appellant contacted the Office within 10 days to reschedule the hearing or explain her failure to participate in the scheduled hearing.

As the circumstances of this case meet the criteria for abandonment as provided in Chapter 2.1601.6(e) of the Office's procedure manual, the Board finds that appellant abandoned her request for an oral hearing.⁸

CONCLUSION

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

⁶ See *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁷ See *supra* note 4.

⁸ On appeal, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). See *J.T.*, 59 ECAB 293 (2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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