



On October 23, 2009 appellant's representative requested a telephone hearing before an Office hearing representative. The hearing representative scheduled the hearing for January 27, 2010.

In a decision dated February 19, 2010, the Office hearing representative found that appellant had abandoned her request for a hearing. The hearing representative found that she failed to appear and that there was no indication that she contacted the Office either before or after the scheduled hearing to explain her failure to appear.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary 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.”<sup>1</sup>

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 hearing representative 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.<sup>2</sup>

### **ANALYSIS**

Appellant made a timely request for a hearing before an Office hearing representative, and the hearing representative properly notified her of the date of the scheduled hearing, together with instructions on calling the toll-free number and entering the provided pass code. Appellant did not request a postponement, she failed to appear (or telephone as instructed), and she failed to provide any notification for such failure within 10 days of the date of the hearing. Given the presence of all three conditions necessary for abandonment, the hearing representative properly issued a formal decision finding that appellant abandoned her request for a hearing. The Board will therefore affirm the Office's February 19, 2010 decision.

### **CONCLUSION**

The Board finds that appellant abandoned her request for a hearing.

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<sup>1</sup> 5 U.S.C. § 8124(b)(1).

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 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