



## **ISSUE**

The issue is whether OWCP properly found that appellant had abandoned his request for an oral hearing before an OWCP hearing representative.

On appeal, appellant contends that he was unable to connect using the pin code OWCP provided for the scheduled oral hearing.

## **FACTUAL HISTORY**

On June 28, 2010 appellant, then a 58-year-old postal carrier, filed an occupational disease claim alleging that he sustained an injury or medical condition on April 14, 2004 as a result of his federal employment. As he was preparing mail for delivery on April 14, 2004, his vision became blurry, he experienced dryness in his throat and he started to feel faint and dizzy. Appellant submitted a U.S. Postal Service routing slip, a SF-50 Personnel Action Form, a screen from WEBMD reporting the causes of type 2 diabetes and the employing establishment's challenge letter.

In a July 16, 2010 letter, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical information. In response, appellant submitted an undated personal statement and several certifications of Health Care Provider, Family and Medical Leave Act (FMLA) forms. In a June 8, 2004 report, Dr. Naland P. Shenoy, a Board-certified internist specializing in endocrinology, diabetes and metabolism, advised that appellant had the onset of type 2 diabetes from about April 15, 2004 and was experiencing significant visual impairment due to the disease. He noted that it was a "chronic lifelong disease, which will require frequent visits, occasional hospitalization and may cause illness and incapacitation."

By decision dated September 3, 2010, OWCP denied the claim finding that the medical evidence was not sufficient to establish that the claimed condition was causally related to the accepted work event(s).

On September 27, 2010 appellant disagreed with the decision and requested a telephonic hearing before an OWCP hearing representative.

In a December 8, 2010 letter, OWCP notified appellant that a telephonic hearing before an OWCP hearing representative was scheduled for January 10, 2011 at 10:00 a.m. eastern time. Appellant was provided a toll-free number and a pass code to connect to the hearing representative and court reporter. The notice was sent to his address of record.

By decision dated February 10, 2011, an OWCP hearing representative found that appellant abandoned his request for an oral hearing.

## **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified

in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>3</sup> Unless otherwise directed in writing by the claim, an OWCP 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.<sup>4</sup> OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.<sup>5</sup>

The authority governing the abandonment of hearings rests with OWCP's procedure manual, which provides that a hearing can be 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, OWCP's Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his request for a hearing and return the case to the district OWCP.<sup>6</sup>

### ANALYSIS

By decision dated September 3, 2010, OWCP denied appellant's claim on the grounds the medical evidence did not establish causal relation. Appellant timely requested an oral hearing (telephonic) before an OWCP hearing representative. In a December 8, 2010 letter, it notified him that a telephonic oral hearing was scheduled for January 10, 2011 at 10:00 a.m. The letter was sent to appellant's address of record.<sup>7</sup> The record shows that he did not appear for the scheduled hearing. Further, appellant did not request a postponement of the hearing or explain his failure to appear at the hearing within 10 days of the scheduled hearing date of January 10, 2011. Therefore, the Board finds that he abandoned his request for a hearing.<sup>8</sup>

On appeal, appellant contends that he was unable to connect to the scheduled hearing with the pass code OWCP provided. There is no evidence of record that he contacted OWCP to inform them of such a problem within 10 days of the scheduled hearing. Additionally, this problem was raised for the first time on appeal, almost three months after the scheduled hearing.<sup>9</sup> Appellant also presents arguments regarding the merits of his claim. As noted, the Board is precluded from reviewing the merits of the claim.

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<sup>3</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>4</sup> 20 C.F.R. § 10.617(b).

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

<sup>6</sup> 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 651 (2007).

<sup>7</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. See *Michelle R. Littlejohn*, *supra* note 5.

<sup>8</sup> See *id.*

<sup>9</sup> Appellant also submitted new evidence on appeal. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

**CONCLUSION**

The Board finds that OWCP properly found that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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