



## **FACTUAL HISTORY**

On December 16, 2009 appellant, a 52-year-old rural route carrier, sustained an injury in the performance of duty on December 5, 2009 while lifting a large package in the performance of duty. OWCP accepted his claim for sprain of the back, lumbar region.

In a decision dated June 18, 2010, OWCP denied appellant's request to expand his claim for a hernia.

On June 28, 2010 appellant requested a telephonic hearing before an OWCP hearing representative.

By letter dated August 27, 2010, OWCP notified appellant that his hearing would be held on October 14, 2010 at 10:00 a.m. eastern time. Appellant was given a toll-free number 1-800-857-3197 and a pass code 16416. The notice was mailed to his address of record. However, appellant did not contact OWCP on the date of the hearing or thereafter.

By decision dated November 16, 2010, OWCP found that appellant abandoned his requested hearing. The decision noted that the hearing was scheduled for October 14, 2010, but he failed to appear as instructed. The decision also found that there was no indication that appellant contacted OWCP either prior or subsequent to the scheduled hearing to explain his failure to participate. Based on these factors, OWCP concluded that he abandoned his oral hearing request.

## **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>4</sup> Unless otherwise directed in writing by the claims examiner, the 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>5</sup> OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.<sup>6</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, the Branch of Hearings and Review will issue a formal

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<sup>4</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>5</sup> 20 C.F.R. § 10.617(b).

<sup>6</sup> See *Michelle R. Littlejohn*, 42 ECAB 463 (1991). It is presumed in absence of evidence to the contrary that a notice mailed to an individual in the ordinary course of business was received.

decision finding that the claimant has abandoned his request for a hearing and return the case to the district OWCP.<sup>7</sup>

### **ANALYSIS**

By decision dated June 18, 2010, OWCP denied appellant's request to expand his claim for a hernia. Appellant timely requested a telephonic hearing. In an August 27, 2010 letter, OWCP advised him that a hearing was scheduled for October 14, 2010 at 10:00 a.m. eastern time. It instructed appellant to telephone a toll-free number and enter a pass code to connect with the hearing representative. He did not telephone at the appointed time. 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 October 14, 2010.<sup>8</sup> The Board, therefore, finds that he abandoned his request for a hearing.

### **CONCLUSION**

The Board finds that appellant abandoned his request for an oral hearing.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>7</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>8</sup> *Id.*