

**United States Department of Labor
Employees' Compensation Appeals Board**

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Trenton, NJ, Employer**

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**Docket No. 10-2310
Issued: June 13, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 10, 2010 appellant filed a timely appeal from a June 7, 2010 nonmerit decision of the Office of Workers' Compensation Programs finding that she abandoned her hearing request.¹ Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit issue in this case.

ISSUE

The issue is whether the Office properly determined that appellant abandoned her request for a hearing.

¹ The last merit decision in this case was the January 27, 2010 Office decision which denied appellant's claim. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. See 20 C.F.R. §§ 501.2(c) and 501.3.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 23, 2009 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim alleging that on November 15, 2008 she injured her lower back and buttock when she slipped and fell down four steps.

The employing establishment controverted her claim alleging that appellant did not report a November 15, 2008 work injury until she was notified that she might be fired for not coming to work.

Appellant provided various medical reports from Dr. Jennifer Taniguchi, a Board-certified orthopedic surgeon.

In a December 12, 2009 signed personal statement, appellant explained that she did not report her injury within 30 days because she was unaware of the 30-day time limitation. She also did not think the injury was serious nor that the pain would become unbearable.

By decision dated January 27, 2010, the Office denied appellant's claim on the grounds that she did not submit sufficient factual evidence to establish that the employment incident occurred as alleged.

On February 8, 2010 appellant submitted a request for an oral hearing and provided additional medical evidence and a February 8, 2010 personal statement.

By letter dated April 6, 2010, the Office's Branch of Hearings and Review notified appellant that a telephone hearing was scheduled for May 11, 2010 at 11:00 a.m. eastern time. It instructed her to call the provided toll-free number a few minutes before the hearing time and enter in the pass code when prompted.

On April 6, 2010 appellant failed to call the toll-free number to participate in the telephonic hearing.

In a decision dated June 7, 2010, the Branch of Hearings and Review found that appellant abandoned her requested hearing. It found that she received written notification of the hearing 30 days in advance, but failed to appear. The Branch of Hearings and Review further determined that nothing in the record established that appellant contacted or attempted to contact the Office either prior to or subsequent to the scheduled hearing to explain her failure to participate. The Office concluded that she abandoned her hearing request.

LEGAL PRECEDENT

Under the Act and its implementing regulations, a claimant who has received a final adverse Office decision is entitled to receive a hearing upon written request within 30 days of the date of the decision for which a hearing is sought.³ Unless otherwise directed, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and any

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

representative at least 30 days before the scheduled date.⁴ The Office has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁵

According to the Office's procedure manual, a hearing can be abandoned only under very limited circumstances where all three of the following conditions are 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 her request for a hearing and return the case to the district Office.⁶

ANALYSIS

The record establishes that, on April 6, 2010, in response to appellant's timely request for a hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled telephonic hearing to be held on May 11, 2010 at 11:00 a.m. eastern time. The hearing notice was properly mailed to her address of record. The Board notes that the notice was sent more than 30 days prior to the scheduled hearing date of May 11, 2010. The record establishes that appellant did not call at the appointed time. In addition, she failed to request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing. As all three conditions are met, the Board finds that appellant abandoned her request for a hearing.⁷

On appeal, appellant contends that she did not attend the hearing because she misunderstood the Office letter advising her to call the Office for her telephonic hearing. Her explanation, however, was submitted with her appeal on September 10, 2010 which did not fall within the 10-day period after the scheduled hearing before the Branch of Hearings and Review and is insufficient to excuse her abandonment.⁸

CONCLUSION

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

⁴ 20 C.F.R. § 10.617(b).

⁵ *A.B.*, 58 ECAB 546 (2007); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(e) (February 2011). *See also G.J.*, 58 ECAB 651 (2007).

⁷ *See M.B.*, Docket No. 10-1077 (issued March 17, 2011).

⁸ *See J.S.*, Docket No. 10-117 (issued August 5, 2010).

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2010 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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