

2004, the Office accepted appellant's claim for right lateral epicondylitis. On April 10, 2007 it accepted that he sustained a recurrence of disability commencing October 16, 2006.

In a decision dated June 26, 2009, the Office granted appellant a schedule award for one percent impairment of the right upper extremity.

On July 18, 2009 appellant requested an oral hearing before an Office hearing representative.

By letter dated October 27, 2009, the Office Branch of Hearings and Review notified appellant that a telephonic hearing was scheduled for December 8, 2009 at 9:30 a.m. eastern time. It instructed him to call the provided toll-free number a few minutes before the hearing time and enter the pass-code to gain access to the conference call.

Appellant did not participate in the telephonic hearing.

In a December 31, 2009 decision, an Office hearing representative found that appellant abandoned his requested hearing. She noted that the telephonic hearing was scheduled for December 8, 2009, but he failed to appear as instructed. The Office hearing representative also found that appellant did not contact the Office either prior or subsequent to the scheduled hearing to explain his failure to participate. Based on these factors, it was found that he abandoned his oral hearing request.

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.”¹

The authority governing the abandonment of hearings rests with the Office'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 decision finding that the claimant has abandoned her request for a hearing and return the case to the district Office.²

¹ 5 U.S.C. § 8124(b)(1).

² 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).

ANALYSIS

The record establishes that on October 27, 2009 in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled telephonic hearing on December 8, 2009 at 9:30 a.m. eastern time. The Board notes that the notice was sent more than 30 days prior to the scheduled hearing date of December 8, 2009. The record establishes that appellant did not call at the appointed time. Further, he did not request a postponement of the hearing or explain his failure to appear at the hearing within 10 days of the scheduled hearing. Therefore, as all three conditions have been satisfied pursuant to the Office's procedures, the Board finds that appellant abandoned his request for a hearing.³

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 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

³ See *C.T.*, 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009).