

FACTUAL HISTORY

On September 14, 2009 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim alleging that she injured her neck and right shoulder when her vehicle was rear-ended. She stated that on September 12, 2009 her vehicle was struck in the rear twice while she was stopped at a red light. Appellant received medical care that same day and returned to work on September 14, 2009.

In a September 17, 2009 letter, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she provide additional medical evidence providing a medical diagnosis and physician's opinion regarding how the alleged employment incident caused or aggravated her claimed injury.

Appellant provided a September 22, 2009 letter from her employer requesting her to seek damages from a third party. She did not submit any other evidence.

By decision dated October 19, 2009, the Office denied appellant's claim on the grounds of insufficient medical evidence to establish that she sustained an injury. It accepted that the September 12, 2009 incident occurred as alleged but determined that she failed to provide a medical diagnosis causally related to the automobile accident.

On November 16, 2009 appellant requested a hearing with a hearing representative regarding the October 19, 2009 decision. She also provided a September 12, 2009 duty status report and hospital discharge instructions signed by a nurse practitioner.

By letter dated January 27, 2010, the Office's Branch of Hearings and Review notified appellant that a telephone hearing was scheduled for March 3, 2010 at 10:00 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 March 3, 2010 appellant failed to call the toll free number to participate in the telephonic hearing.

In a decision dated March 26, 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 decision also found 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 Federal Employees' Compensation 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.² Unless

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

otherwise directed, the Office 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.³ The Office has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁴

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.⁵

ANALYSIS

The record establishes that, on January 27, 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 March 2, 2010 at 10:00 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 March 2, 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.⁶

On appeal, appellant contends that that she did not attend the hearing because she was working. Her explanation, however, was submitted with her appeal on July 6, 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.⁷

CONCLUSION

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

³ 20 C.F.R. § 10.617(b).

⁴ *A.B.*, 58 ECAB 546 (2007); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(e) (January 1999). *See also G.J.*, 58 ECAB 651 (2007).

⁶ *See C.T.*, 60 ECAB __ (Docket No. 08-2160, issued May 7, 2009).

⁷ *See J.S.*, Docket No. 10-117 (issued August 5, 2010).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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