



## **ISSUE**

The issue is whether appellant abandoned his request for an oral hearing before OWCP's hearing representative.

## **FACTUAL HISTORY**

On April 17, 2010 appellant, then a 62-year-old training instructor, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 1995 he sustained a superficial phlebitis when he stomped on a shovel. He stated that the pain went away but returned around August 1995. Appellant first received medical care on February 1, 1996, notified his supervisor on April 1, 2006 and was last exposed to the condition alleged to have caused his injury on April 6, 2010.

By letter dated April 23, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked that he respond to the provided questions within 30 days.

By decision dated June 4, 2010, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged.

On June 16, 2010 appellant requested an oral hearing by telephone before OWCP's hearing representative.

By letter dated August 18, 2010, OWCP notified appellant that his hearing would be held on October 6, 2010 at 11:00 a.m. eastern time. It provided him with a toll free number to call at that time to be connected to the hearing representative and court reporter.

In a September 10, 2010 telephone call note, OWCP's claims examiner reported that appellant had called to report that he had returned to work on September 8, 2010. The claims examiner informed him that the hearing was being held on October 6, 2010 and advised him to refer to his hearing notice.

By decision dated October 21, 2010, OWCP's hearing representative found that appellant had abandoned his request for an oral hearing. The hearing representative noted that appellant received written notice 30 days in advance of the hearing but failed to participate. The hearing representative also found no evidence that appellant contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides the right to a hearing before OWCP's hearing representative:

“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.”<sup>3</sup>

Chapter 2.1601.6.e(1) of OWCP’s procedure manual explains when an employee is considered to have abandoned his hearing request:

“A hearing can be considered 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, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district Office].”<sup>4</sup>

### **ANALYSIS**

Following OWCP’s June 4, 2010 decision denying his claim for compensation, appellant requested an oral hearing before OWCP’s hearing representative. On August 18, 2010 it notified appellant that his telephone hearing was scheduled for October 6, 2010 at 11:00 a.m. eastern time. The letter was sent to appellant’s address of record.<sup>5</sup> It provided him with a toll free number and pass code to call in at the time of the hearing. Appellant did not request a postponement, failed to call-in at the scheduled hearing, and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As all three conditions for abandonment are met, the Board finds that appellant abandoned his request for an oral hearing. The Board will therefore affirm the hearing representative’s October 21, 2010 decision.

### **CONCLUSION**

The Board finds that appellant abandoned his request for an oral hearing before OWCP’s hearing representative on October 6, 2010.

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e(1) (January 1999).

<sup>5</sup> See *Joseph R. Giallanza*, 55 ECAB 186 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 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