

FACTUAL HISTORY

On March 10, 2010 appellant, then a 38-year-old heating, ventilation and air conditioning (HVAC) mechanic, filed a traumatic injury claim alleging that on March 9, 2010 he twisted his right knee when he slipped on water on the basement floor. OWCP accepted his claim for derangement of the right knee meniscus. Appellant was placed on the periodic rolls.

On January 7, 2011 OWCP issued a notice of proposed termination of appellant's disability compensation and medical benefits based on a second-opinion examination report. Appellant was advised that he had 30 days to submit additional relevant evidence or argument if he disagreed with the proposed action. By decision dated February 15, 2011, OWCP terminated his compensation and medical benefits effective that date.

On March 7, 2011 appellant requested a telephonic hearing before an OWCP hearing representative. He submitted various medical and physical therapy reports.

By letter dated April 19, 2011, OWCP notified appellant that his hearing would be held on May 31, 2011 at 2:30 p.m. eastern time. Appellant was provided instructions to access the hearing. 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 June 22, 2011, OWCP found that appellant abandoned his requested hearing. The decision noted that the hearing was scheduled for May 31, 2011, 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 OWCP 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 in writing by the claims examiner, OWCP's 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.⁴ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁵

OWCP's procedure manual provides that a hearing can be abandoned only under very limited circumstances where all three of the following conditions are present: (1) the claimant has not requested a postponement; (2) the claimant has failed to appear at a scheduled hearing; and (3) the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, OWCP's hearing representative will

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

⁴ 20 C.F.R. § 10.617(b).

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

issue a formal decision finding that the claimant has abandoned his request for a hearing and return the case to the district OWCP.⁶

ANALYSIS

By decision dated February 15, 2011, OWCP terminated appellant's compensation and medical benefits effective that date. Appellant timely requested a telephonic hearing. In an April 19, 2011 letter, OWCP advised him that a hearing was scheduled for May 31, 2011 at 2:30 p.m. eastern time. It instructed appellant to telephone a toll-free number and enter a pass code to connect with the hearing representative. Appellant did not request a postponement of the hearing. He did not telephone at the appointed time and did not contact OWCP to explain his failure to appear at the hearing within 10 days of the scheduled hearing date of May 31, 2011.⁷ The Board finds that the circumstances in this case demonstrate that appellant abandoned his request for a hearing. Thus, the Board affirms the June 22, 2011 OWCP hearing representative's decision.

On appeal, appellant contends that he should not have to endure or be forced into a hearing when he was still receiving medical treatment and requested that his compensation be continued. The Board notes, however, that it only has jurisdiction over OWCP's June 23, 2011 decision finding that he abandoned his request for a hearing. Appellant failed to request a postponement, failed to appear at a scheduled hearing and failed to provide any explanation for such failure within 10 days of the scheduled date and therefore abandoned his request for an oral hearing. Thus, the Board finds that appellant abandoned his request for a hearing.

CONCLUSION

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

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 *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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