

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

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S.S., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Richmond, CA, Employer )

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**Docket No. 13-688**  
**Issued: August 2, 2013**

*Appearances:*

*Hank Royal, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 2, 2013 appellant, through her attorney, filed a timely appeal from the August 9, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) finding that she abandoned her request for an oral hearing. The most recent merit decision was issued on March 21, 2012, more than 180 days prior to the filing of this instant appeal. As such, the Board has no jurisdiction to review it. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant abandoned her request for a hearing.

**FACTUAL HISTORY**

This case has previously been on appeal before the Board.<sup>2</sup> In a September 30, 2004 decision, the Board affirmed the January 20, 2004 decision of OWCP which found that appellant

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Docket No. 04-1105 (issued September 30, 2004).

had not met her burden of proof to establish that she sustained more than a four percent permanent impairment of her left leg, for which she received a schedule award. The facts and history contained in the prior appeal are incorporated by reference.

By decision dated March 21, 2012, OWCP reduced appellant's compensation effective March 21, 2012 based on her ability to work as a receptionist, which was found to be medically and vocationally suitable and fairly and reasonably represented her wage-earning capacity.

On April 18, 2012 appellant's representative requested a hearing.

In a June 6, 2012 letter, OWCP notified appellant and her representative of the time and place for her hearing scheduled on July 12, 2012. The notice was mailed to appellant's, and her representative's, address of record.

By decision dated August 9, 2012, OWCP found that appellant abandoned her requested hearing. The decision noted that the hearing was scheduled for July 12, 2012, but she 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 her failure to participate. Based on these factors, OWCP concluded that appellant abandoned her oral hearing request.

### **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>3</sup> Unless otherwise directed in writing by the claimant, the 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.<sup>4</sup>

A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.<sup>5</sup> Where it has been determined that a claimant has abandoned his or her request for a hearing, OWCP's Branch of Hearings and Review will issue a formal decision.<sup>6</sup>

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

<sup>4</sup> 20 C.F.R. § 10.617(b).

<sup>5</sup> *Id.* at § 10.622(f).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

### ANALYSIS

By decision dated March 21, 2012, OWCP reduced appellant's compensation based on her ability to work as a receptionist. Appellant timely requested an oral hearing.

In a June 6, 2012 letter, OWCP notified appellant and her representative of the time and location for the hearing, which was scheduled for July 12, 2012. However, neither appellant nor her representative appeared at the scheduled hearing. Appellant did not request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date. The Board, therefore, finds that she abandoned her request for a hearing.

On appeal, appellant's representative argued the merits of appellant's claim. However, the Board only has jurisdiction to consider whether OWCP properly found that appellant abandoned her hearing request. As explained above, appellant abandoned her request for a hearing.

### CONCLUSION

The Board finds that OWCP properly found that appellant abandoned her request for an oral hearing.

### ORDER

**IT IS HEREBY ORDERED THAT** the August 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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