

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baton Rouge, LA, Employer**

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**Docket No. 12-1959
Issued: January 28, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 24, 2012 appellant filed a timely appeal of an April 2, 2012 Office of Workers' Compensation Programs' (OWCP) decision finding that he abandoned his oral hearing. Because over 180 days elapsed from the most recent merit decision of October 19, 2011, to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly determined that appellant abandoned his request for a hearing.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 29, 2011 appellant, then a 27-year-old letter carrier, filed an occupational disease claim alleging that he worked in humid and stressful conditions. He alleged that he was subjected to unbearable demands.

In a letter dated September 13, 2011, OWCP requested additional factual and medical evidence. On June 4, 2011 appellant responded that he worked in temperatures in excess of 100 degrees and his body began to have involuntary movements and he became temporarily delirious. He attributed his condition to unbearable demands, extremely long hours of work and undue stress or pressure from management. Appellant alleged that he was treated unfairly on a regular basis and had filed an Equal Employment Opportunity complaint. He alleged that he worked 9 to 12 hours a day and 6 days a week. Appellant submitted medical evidence diagnosing depressive disorder and a stress reaction.

By decision dated October 19, 2011, OWCP denied appellant's claim for an emotional condition on the grounds that he had not established a compensable factor of employment.

On November 17, 2011 appellant requested a telephone hearing. In a letter dated January 30, 2012, OWCP's Branch of Hearings and Review informed him that a hearing was scheduled for March 6, 2012 at 1:30 p.m. eastern time. The Branch of Hearings and Review provided appellant with a toll-free number and a pass code. It instructed him to call the toll-free number and when prompted enter the pass code provided.

By decision dated April 2, 2012, OWCP's hearing representative found that the oral hearing was scheduled for March 6, 2012 but appellant failed to appear. The hearing representative explained, "There is no indication in the file that you contacted [OWCP] either prior or subsequent to the scheduled hearing to explain your failure to appear. Under these circumstances it is deemed that you have abandoned your request for hearing."

LEGAL PRECEDENT

OWCP regulations provide guidance as to how a claimant may postpone a hearing, and when a hearing will be considered to be abandoned. Section 10.622 of the regulations provide:

"(c) Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant and representative, OWCP will, upon submission of proper written documentation of unavoidable serious scheduling conflicts (such as court-ordered appearances/trials, jury duty or previously scheduled outpatient procedures), entertain requests from a claimant or his representative for rescheduling as long as the hearing can be rescheduled on the same monthly docket, generally no more than seven days after the originally scheduled time. When a request to postpone a scheduled hearing under this subsection cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly.

“(d) Where the claimant or representative is hospitalized for a nonelective reason or where the death of the claimant’s or representative’s parent, spouse, child or other immediate family prevents attendance at the hearing, OWCP will, upon submission of proper documentation, grant a postponement beyond one monthly docket.

“(e) Decisions regarding rescheduling under paragraphs (b) through (d) of this section are within the sole discretion of the hearing representative and are not reviewable.

“(f) 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.”²

ANALYSIS

By decision dated October 19, 2011, OWCP denied appellant’s claim for an emotional condition. Appellant timely requested an oral hearing. In a January 30, 2012 letter, OWCP notified him that a telephone hearing was scheduled for March 6, 2012 at 1:30 p.m., eastern time.³ It instructed appellant to telephone a toll-free number and enter a pass code to connect with OWCP’s hearing representative. Appellant did not telephone at the appointed time. 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 date of March 6, 2012. The Board finds that appellant abandoned his request for a hearing.

CONCLUSION

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

² 20 C.F.R. § 10.622. With respect to abandonment of hearing requests, OWCP’s procedures provide that 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. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.69(g) (October 2011); see also *J.W.*, Docket No. 12-1567 (issued November 8, 2012).

³ In the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have been received. See *W.P.*, 59 ECAB 514 (2008).

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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