



## ISSUE

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

## FACTUAL HISTORY

On June 14, 2012 appellant, then a 67-year-old sheet metal worker, filed an occupational disease claim alleging that he developed hearing loss due to noise exposure during his federal employment. He first became aware of his condition on January 1, 1980 and first related his condition to his employment on that date. In a telephone conference with OWCP, appellant stated that he was last employed at the employing establishment in 1980. The claims examiner noted that the employing establishment was to produce any past audiograms that were performed while he was employed which would be used to determine whether the employing establishment had knowledge of his hearing loss.

The employing establishment responded on August 10, 2012. It stated that appellant was last employed on January 12, 1979 and that he received hearing examinations while employed; but his initial preemployment examination noted a moderate preexisting hearing loss in both ears in 1970. The employing establishment stated that appellant's employment audiograms did not document a permanent standard threshold shift to signify an occurrence of event and the employing establishment did not have immediate actual knowledge of appellant's hearing loss. It submitted audiometric reports which listed testing in 1970, 1971, 1975 and 1976. These tests reveal losses in the left ear of six, nine, eight and eight respectively and in the right ear losses of six, nine, six and nine respectively.

By decision dated August 20, 2012, OWCP denied appellant's claim for hearing loss finding that it was not timely filed. It found that the evidence did not establish that appellant's claim was filed within three years of the date of injury or that his immediate supervisor had actual knowledge within 30 days of the date of injury. OWCP noted that the date of injury was January 1, 1980 and that appellant's claim for compensation was filed on June 14, 2012.

On September 15, 2012 appellant requested a telephonic hearing before an OWCP hearing representative. In a letter dated November 27, 2012, mailed to appellant's address of record, OWCP informed appellant that his hearing was scheduled for January 8, 2013 at 8:00 a.m. eastern time and provided him with a toll-free number and pass code to reach the hearing representative.

By decision dated January 31, 2013, OWCP found that appellant had abandoned his request for a hearing. It noted that he received notification of the hearing 30 days in advance and failed to appear. There was no evidence in the record that appellant contacted OWCP either prior or subsequent to the scheduled hearing to explain his failure to appear.

## 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.”<sup>3</sup>

## ANALYSIS

By decision dated August 20, 2012, OWCP denied appellant’s claim for hearing loss. Appellant timely requested an oral hearing. In a November 27, 2012 letter, OWCP notified him

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<sup>3</sup> 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 2.1601.6(g) (October 2011). *J.W.*, Docket No. 12-1567 (issued November 8, 2012).

that a telephone hearing was scheduled for January 8, 2013 at 8:00 a.m., eastern time. The notice was sent to his address of record.<sup>4</sup> OWCP instructed appellant to telephone a toll-free number and enter a pass code to connect with the 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 January 8, 2013. The Board therefore finds that appellant abandoned his request for a hearing.

**CONCLUSION**

The Board finds that appellant abandoned his request for a hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>4</sup> Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have arrived at the mailing address in due course. See *James A. Gray*, 54 ECAB 277 (2002).