

FACTUAL HISTORY

Appellant, a 65-year-old custodian, injured his lower back in the performance of duty on or about November 24, 2003. He had previously undergone a lumbar laminectomy (L3-S1) in July 1999. On August 16, 2004 appellant underwent additional surgery which included decompressive laminectomy at L4-5, discectomy at L4-5 and fusion at L3-S1. After initially denying the claim, OWCP accepted his claim for permanent aggravation of lumbar disc degeneration and postlaminectomy (failed back) syndrome. Appellant's claim was later expanded to include the consequential conditions of depressive disorder and psychogenic pain. He has received appropriate wage-loss compensation dating back to November 24, 2003.

By decision dated May 16, 2012, OWCP terminated medical benefits with respect to appellant's accepted psychological conditions.³ Appellant subsequently requested an oral hearing before the Branch of Hearings and Review.⁴

On July 26, 2012 OWCP provided appellant a 30-day advance notice of the oral hearing which was scheduled for September 6, 2012. The hearing notice further advised that he and/or his representative should be present and ready to proceed at the designated time and place. OWCP also explained the circumstances under which a scheduled hearing could be postponed and rescheduled pursuant to 20 C.F.R. § 10.622.

In a September 26, 2012 decision, OWCP's hearing representative found that appellant abandoned his hearing request which had been scheduled for September 6, 2012. Appellant failed to appear at the designated time and place and according to the hearing representative, there was no indication in the file that appellant contacted OWCP either before or after the scheduled hearing explaining his failure to appear.

LEGAL PRECEDENT

A claimant dissatisfied with a decision on his or her claim is entitled, upon timely request, to a hearing before an OWCP representative.⁵ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date.⁶ A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date of the hearing that another hearing be scheduled.⁷ Where good cause for failure to

³ Prior to terminating benefits, OWCP issued an April 13, 2012 notice of proposed termination and afforded appellant 30 days to respond.

⁴ The hearing request was accompanied by a June 12, 2012 report from Dr. Will Miles, a clinical psychologist, who advised that appellant required ongoing psychological treatment for employment-related chronic pain and depressive disorder.

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

⁶ 20 C.F.R. § 10.617(b).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (October 2011).

appear is shown, another hearing will be scheduled and conducted by teleconference.⁸ The claimant's failure to request another hearing within 10 days shall constitute abandonment of the hearing request.⁹

ANALYSIS

Appellant challenged, *inter alia*, OWCP's termination of psychological medical benefits. However, the May 16, 2012 merit decision terminating benefits is not currently before the Board. That decision predated appellant's March 22, 2013 notice of appeal by more than 180 days.¹⁰ Accordingly, the Board does not have jurisdiction over the merits of the claim. The only decision currently before the Board is the hearing representative's September 26, 2012 nonmerit decision.

As noted, appellant did not appear for the scheduled hearing and consequently, OWCP's hearing representative found that he had abandoned his request for a hearing. He does not dispute having received a 30-day advance written notice of the September 6, 2012 scheduled hearing.¹¹ Moreover, there is no indication that appellant requested postponement of the hearing in accordance with 20 C.F.R. § 10.622. On appeal, he claimed to have been unable to attend the September 6, 2012 hearing due to complications from a May 2012 left total knee arthroplasty. Appellant had reportedly been hospitalized at the time of the scheduled hearing. When properly documented, hospitalization for nonelective reasons may be grounds for postponement of a scheduled hearing.¹² However, the current appeal appears to be the first instance where appellant advanced this particular argument or any other argument, as justification for his September 6, 2012 absence. Appellant did not submit a written request within the 10-day period following the scheduled hearing explaining his absence and/or requesting that the hearing be rescheduled. Under the circumstances, the hearing representative properly found that appellant abandoned his hearing request.

CONCLUSION

The Board finds that appellant abandoned his hearing request.

⁸ *Id.*

⁹ *Id.*

¹⁰ 20 C.F.R. § 501.3(e).

¹¹ The July 26, 2012 hearing notice was sent to appellant's address of record and it has not been returned to OWCP as undeliverable.

¹² 20 C.F.R. § 10.622(c).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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