



Board-certified orthopedic surgeon, performed a left shoulder hemiarthroplasty on June 14, 2011.

On February 17, 2012 Dr. Viess performed a resection arthroplasty of the left shoulder due to infection. On April 11, 2012 he diagnosed appellant with left shoulder recurrent septic arthritis and performed irrigation and debridement of appellant's left shoulder. Dr. Viess supported appellant's total disability for work and the need for additional surgery.

OWCP referred appellant for a second opinion examination on August 22, 2012. In a report dated September 28, 2012, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, found that appellant was capable of modified duty.

OWCP referred appellant for vocational rehabilitation counseling. Appellant returned to two hours of modified work on February 19, 2013.<sup>1</sup>

On May 23, 2013 Dr. Viess recommended a reverse total shoulder arthroplasty and found that appellant was totally disabled beginning May 24, 2013. Appellant filed a claim for wage-loss compensation from May 23 through June 14, 2013. OWCP requested additional medical evidence in support of his claim for total disability on June 24, 2013. Dr. Viess examined appellant on July 2, 2013 and stated that appellant had pain and swelling due to his severe shoulder injury, infection and lack of a shoulder joint. He again recommended surgery and opined that appellant was totally disabled.

By decision dated August 5, 2013, OWCP denied appellant's claim for wage-loss compensation for the period May 23 to June 14, 2013.

On September 1, 2013 appellant requested an oral hearing before an OWCP hearing representative. In a letter dated December 18, 2013, the Branch of Hearings and Review informed him that a telephonic hearing was scheduled for February 3, 2014 at 1:45 p.m. Eastern Standard Time (EST) and provided him with the telephone number and the passcode. This letter was mailed to appellant's address of record.

On January 7, 2014 Dr. James Kelly, a Board-certified orthopedic surgeon, performed a left shoulder reverse replacement.

By decision dated February 19, 2014, the Branch of Hearings and Review found that a telephone hearing was scheduled for February 3, 2014. Appellant received written notice of the hearing, but failed to appear. The Branch of Hearings and Review found no evidence that he contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear and thus he abandoned his request for a hearing.

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<sup>1</sup> OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$478.61 as he returned to two hours of work on February 19, 2013 and continued to receive compensation for total disability through March 9, 2013. By decision dated May 17, 2013, it administratively terminated the collection of the debt.

## LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides the right to a hearing before an OWCP hearing representative, stating:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>2</sup>

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing 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, 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.<sup>4</sup> OWCP has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.<sup>5</sup>

The authority governing abandonment of hearings rests with OWCP’s regulations, which provide in pertinent part as follows:

“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.”<sup>6</sup>

## ANALYSIS

Following OWCP’s August 5, 2013 decision denying his claim for compensation, appellant requested an oral hearing on September 1, 2013 before an OWCP hearing representative. By letter dated December 18, 2013, the Branch of Hearings and Review informed him that a telephonic hearing was scheduled for February 3, 2014 at 1:45 p.m. EST. It provided appellant with the telephone number and the passcode to call in at the time of the hearing and mailed it to his address of record. Appellant did not request a postponement, failed to call in at the time of the scheduled hearing and failed to provide any explanation for such

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.616(a).

<sup>4</sup> *Id.* at 10.617(b).

<sup>5</sup> See *Michelle R. Littlejohn*, 42 ECAB 463 (1991); see also *K.D.*, Docket No. 11-77 (issued August 18, 2011).

<sup>6</sup> 20 C.F.R. § 10.622(f); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011). See also *M.F.*, Docket No. 14-128 (issued March 18, 2014).

failure within 10 days of the scheduled date of the hearing.<sup>7</sup> All three conditions for abandonment are met. The Board finds that appellant abandoned his request for an oral hearing. The Board will therefore affirm the hearing representative's February 19, 2014 decision.

**CONCLUSION**

The Board finds that appellant abandoned his September 1, 2013 request for an oral hearing before an OWCP hearing representative.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>7</sup> Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the "mailbox rule." See *James A. Gray*, 54 ECAB 277 (2002). The December 18, 2013 OWCP letter was sent to appellant's address of record and is presumed to have been received by his absent any notice of nondelivery.