

FACTUAL HISTORY

On June 19, 2003 appellant, then a 46-year-old mail processing clerk, filed a traumatic injury claim alleging that on April 10, 2003 she sustained injuries to her left upper back, left arm, and neck due to repetitive reaching and bending over the course of 30 to 40 minutes. By decision dated August 5, 2003, OWCP accepted the claim for cervical strain.

On October 21, 2004 appellant accepted a limited-duty assignment as a modified distribution clerk. She noted that she accepted the position under duress and that she disagreed with the change in job title and changes in her hours. The employing establishment continued to offer appellant modified assignments through December 28, 2007 within appellant's medical restrictions, which she continued to sign under protest.

On April 13, 2009 the employing establishment informed appellant that it was unable to identify any available operationally necessary tasks within her medical restrictions. In a record of a telephone conversation dated May 8, 2009, an OWCP representative confirmed that appellant was still off work. On February 26, 2013 appellant accepted a job offer as a customer care agent, but noted that she also accepted this job offer under duress because her benefits were being threatened.

By decision dated June 14, 2013, OWCP found that appellant's wages as a customer care agent fairly and reasonably represented her wage-earning capacity, and her actual earnings met or exceeded the current wages of the position held when injured. It terminated her wage-loss compensation payments and noted that the decision did not affect coverage of her medical benefits.

On July 9, 2013 appellant requested an oral hearing before the Branch of Hearings and Review on the issue of her wage-earning capacity.

By letter dated October 25, 2013, OWCP notified appellant that her hearing would be held on December 9, 2013 at noon, Eastern Time. It provided her with a toll-free number to call at that time to be connected to the hearing representative and court reporter, along with a pass code. Appellant responded by letter dated December 4, 2013, noting that Roy Dumas would be her representative at the hearing on December 9, 2013 at noon, Eastern Time. Neither appellant nor her representative participated in the scheduled hearing.

By decision dated January 9, 2014, an OWCP hearing representative found that appellant had abandoned her request for an oral hearing. She noted that appellant received written notice 30 days in advance of the hearing but failed to appear. The hearing representative also found no evidence that appellant contacted OWCP either prior to or subsequent to the scheduled hearing to explain her failure to appear.

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 [her] claim before a representative of the Secretary.”²

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.³ 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.⁴ OWCP has the burden of proving that it mailed to appellant and her representative a notice of a scheduled hearing.⁵

OWCP’s regulations which govern abandonment of hearing provide 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.”⁶

ANALYSIS

Following OWCP’s June 14, 2013 decision concerning appellant’s wage-earning capacity, appellant requested an oral hearing before an OWCP hearing representative. On October 25, 2013 OWCP notified appellant that her telephonic hearing was scheduled for December 9, 2013 at noon, Eastern Time. It provided her with a toll-free number and a pass code to use at the time of the scheduled hearing. Appellant did not request a postponement, failed to call in at the scheduled hearing, and failed to provide any notification for such failure to OWCP within 10 days of the scheduled date of the hearing.

² *Id.* at § 8124(b)(1).

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at 10.617(b).

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

⁶ 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).

On appeal, appellant explained that her absence from the hearing was due to family emergency and medical problems. However, she did not provide such notification to OWCP within 10 days of the scheduled date of the hearing. All three conditions for abandonment are met and the Board finds that appellant abandoned her request for an oral hearing.⁷

CONCLUSION

The Board finds that appellant abandoned her request for an oral hearing before an OWCP hearing representative on December 9, 2013.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁷ C.H., Docket No. 14-620 (issued June 25, 2014).