

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

N.L., claiming as widow of C.L., Appellant)	
)	
and)	
)	Docket No. 15-0713
)	Issued: July 14, 2015
DEPARTMENT OF JUSTICE, BUREAU OF)	
ALCOHOL, TOBACCO, FIREARMS, &)	
EXPLOSIVES, Sylacauga, AZ, Employer)	
)	

Appearances:
Jimmy Carpenter, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 3, 2015 appellant's representative filed a timely appeal from a December 31, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from April 24, 2014, the most recent OWCP merit decision, to the filing of the current appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant abandoned her request for a hearing.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 22, 2013 appellant, the employee's widow, filed a claim for survivor benefits. She alleged that work-related hypertension and congestive heart failure contributed to her husband's death on January 12, 2013.

By decision dated April 24, 2014, OWCP denied appellant's claim because the medical evidence of record was insufficient to establish that the employee's death was causally related to his employment.

On May 16, 2014 appellant requested an oral hearing.

In a November 5, 2014 letter, OWCP notified appellant that a telephone hearing was scheduled for December 9, 2014 at 9:40 a.m. It provided the telephone number and passcode for accessing the hearing. The notice also noted the hearing representative's telephone number and her fax number. The notice was mailed to appellant's address of record.

Appellant did not call in to the scheduled hearing.

By decision dated December 31, 2014, OWCP found that appellant had abandoned her request for a hearing. The decision noted that the hearing had been scheduled for December 9, 2014, but that appellant had failed to call into the hearing as instructed. The decision also found that there was no indication that appellant had contacted OWCP prior or subsequent to the scheduled hearing to explain her failure to participate. OWCP concluded that appellant had abandoned her hearing request.

On appeal appellant's representative argued that his office telephone system was having technical difficulties on the day of the hearing. He noted that he called the number when he regained telephone service at 2:00 p.m., even though he knew he would not have the opportunity to have a hearing. Appellant's representative advised that there was no other number to call and that he waited until he received the December 31, 2014 decision from OWCP. He asserted that appellant had not abandoned her hearing request and reiterated her desire to contest OWCP's decision.

LEGAL PRECEDENT

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.² Unless otherwise directed in writing by the claims examiner, 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

² *Id.* at § 8124(b)(1); 20 C.F.R. § 10.616(a).

before the scheduled date.³ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁴

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.⁵

Where it has been determined that a claimant has abandoned his or her request for a hearing, OWCP's Branch of Hearings and Review will issue a formal decision.⁶

ANALYSIS

By decision dated April 24, 2014, OWCP denied appellant's claim for survivor benefits. Appellant timely requested a hearing. In a November 5, 2014 letter, OWCP notified appellant of the time, telephone number, and access code for the December 9, 2014 scheduled telephone hearing. The notice was mailed to her address of record. Appellant did not dial in for her hearing at the appointed time. She did not request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of December 9, 2014. The Board, therefore, finds that appellant abandoned her request for a hearing.

Appellant's representative advised that he was unable to call at the scheduled time because his telephone system was having technical difficulties. The Board notes that the record does not contain any evidence to suggest that appellant contacted OWCP within the allotted time to alert it of technical difficulties.⁷

CONCLUSION

The Board finds that OWCP properly found that appellant abandoned her request for a hearing.

³ 20 C.F.R. § 10.617(b).

⁴ See *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ 20 C.F.R. § 10.622(f).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁷ Although the representative indicated that he had no way to contact OWCP, OWCP's November 5, 2014 letter, provided the telephone number and passcode for accessing the hearing. In addition, the notice also listed the hearing representative's telephone number and her fax number.

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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