

FACTUAL HISTORY

Appellant, a 25-year-old border patrol officer, filed a claim for traumatic injury (Form CA-1) on September 5, 2014 alleging that he strained his lower back after attending back-to-back training classes on August 29, 2014.

In a report dated September 24, 2014, Dr. Waqar Waheed, Board-certified in neurology and neuromuscular medicine, advised that appellant was experiencing bilateral lower extremity weakness and pain which began approximately three months previously when he started training at a law enforcement academy in Georgia. He reported that appellant was involved in significant physical activity and training when he started to experience bilateral knee pain. Appellant was evaluated and diagnosed with possible bilateral knee tendinitis; he continued with his training, but began having pain radiating from his buttocks bilaterally to the posterior aspect of his thighs, which had a numbness and tingling sensation. Dr. Waheed asserted that appellant's condition continued to deteriorate and he started experiencing weakness in the lower extremities and spasms with associated numbness, tingling sensation, and flushing. Appellant underwent a magnetic resonance imaging (MRI) scan of the entire spine which showed mild degenerative changes at C5-6 and disc protrusion at L5-S1 with mild L5-S1 neuroforaminal stenosis. Dr. Waheed advised that the MRI scan did not show any evidence of myelopathy, upper motor neuron deterioration process, or motor neuron disease. He scheduled appellant for further diagnostic tests.

In a September 5, 2015 report, Dr. Michael Dunn, a Board-certified family practitioner, advised that appellant had been experiencing mild lower back pain after an injury which occurred at a training class on August 29, 2014. He reported that appellant had pain in the low back with radiating pain to the anterior aspect of the right and left leg and his feet. Dr. Dunn diagnosed lumbar radiculopathy and asserted that appellant had been scheduled for further evaluation due to a worsening of his symptoms.

By decision dated October 17, 2014, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained a lower back injury in the performance of duty on August 29, 2014.

On November 12, 2014 appellant requested an oral hearing before an OWCP hearing representative. He obtained legal counsel on November 14, 2014.

On May 4, 2015 OWCP sent a notice of a telephonic hearing to appellant and counsel. It provided procedural information regarding the hearing. The notice stated that a hearing would be held on June 12, 2015 at 10:00 a.m. Eastern Time. Appellant did not appear at the hearing.

By decision dated June 25, 2015, OWCP determined that appellant had abandoned his request for a hearing. It explained that there was no evidence of record that appellant had contacted OWCP either prior to or within 10 days after the scheduled hearing to explain his failure to appear.

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

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁵ With respect to abandonment of hearing requests, Chapter 2.1601.6(g) of OWCP's procedures provide in relevant part that failure of the claimant to appear at the scheduled hearing, failure to request a postponement, and failure to request in writing within 10 days after the date set for the hearing that another hearing be scheduled 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 and return the case to the district office.⁶

ANALYSIS

In finding that appellant abandoned his November 12, 2014 request for a hearing, OWCP noted that a hearing had been scheduled by telephone for June 12, 2015, that he received written notification of the hearing 30 days in advance, that he failed to appear, and that the record contained no evidence that he contacted OWCP to explain his failure to attend the hearing. Based on the evidence of the record, appellant did not request postponement of the hearing date, failed to appear at the scheduled hearing, and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the criteria for abandonment as specified in Chapter 2.1601.6(e) of OWCP's procedures, OWCP properly found that he abandoned his request for an oral hearing before an OWCP hearing representative.

On appeal appellant's counsel alleges that the hearing should not be considered abandoned because counsel had submitted a letter canceling the oral hearing and requesting instead that the hearing representative issue a decision on the written record. The Board notes that the record does not contain a letter from counsel requesting that the oral argument be cancelled prior to the issuance of the June 25, 2015 decision.

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

³ *Id.* at § 10.617(b).

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

⁵ *Claudia J. Whitten*, 52 ECAB 483 (2001).

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

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board