



problems after inhaling diesel fuel while in the performance of duty. He stopped work on September 18, 2014 and returned on September 23, 2014.

By letter dated October 6, 2014, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant was treated by Dr. Jyotir Mehta, a Board-certified pulmonologist, on March 30, 2010 and October 6, 2014 for bronchial asthma and reactive airway disease secondary to chemical exposure. He diagnosed asthma, shortness of breath, wheezing, and obstructive sleep apnea. Dr. Mehta performed a pulmonary function test on October 6, 2014 which revealed severe obstructive airways disease and hyperactive airway disease. In emergency room notes dated September 18, 2014, appellant was treated for minor-to-moderate exposure to fumes. He reported inhalation of noxious fumes after a chemical spill at work. Dr. William Flowers, a Board-certified emergency room physician diagnosed bronchospasm and toxic effect of gas, fumes, or vapors.

In a narrative statement dated October 31, 2014, appellant indicated that on September 18, 2014 he was transferred to another job site. He informed management that he could not work around motor vehicles with fumes and dust. Appellant reported to his work station and began to inhale fumes which caused him to be short of breath, his throat began to swell and he vomited. He called an ambulance and he was taken to the hospital.

By decision dated November 14, 2014, OWCP denied appellant's claim, finding that the evidence of record did not support that the injury or event occurred as alleged.

On December 10, 2014 appellant requested an oral hearing before an OWCP hearing representative. He submitted reports from Dr. Parina Lockette, a Board-certified family practitioner, dated October 17, 2014 to November 5, 2017, who returned appellant to work with restrictions of working in an area free of toxins and fumes, noting that these agents aggravate his asthma.

On May 18, 2015 OWCP notified appellant that a telephone hearing would be held on June 26, 2015 at 12:45 p.m., Eastern Standard Time (EST). It instructed appellant to call the provided toll-free number shortly before the hearing time and enter the pass code to gain access to the conference call. OWCP mailed the May 18, 2015 notice of hearing to his address of record.

By decision dated July 16, 2015, OWCP found that appellant had abandoned his request for a hearing. It determined that appellant received a written notice of the hearing 30 days before the scheduled hearing, but did not appear and that he failed to timely explain his absence from the scheduled hearing.

### **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.<sup>2</sup> Unless otherwise directed in writing by the claimant, the 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>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

### **ANALYSIS**

On November 14, 2014 OWCP denied appellant's claim. Appellant timely requested an oral hearing. In an May 18, 2015 letter, OWCP notified him that a telephone hearing was scheduled for June 26, 2015 at 12:45 p.m. EST. It instructed appellant to telephone a toll-free number and enter a pass code to connect with the hearing representative. Appellant did not telephone at the appointed time, nor did he request a postponement of the hearing or explain his failure to appear at the hearing within 10 days of the scheduled hearing date of June 26, 2015. The Board therefore finds that he abandoned his request for a hearing.

On appeal appellant asserts that he suffers from reactive airway disease and was unable to participate in the process at that time, but would like to reschedule the hearing. The Board finds that he failed to request a postponement of the scheduled hearing appear at the scheduled hearing, or provide any notification for such failure within 10 days of the scheduled date. Appellant therefore abandoned his request for an oral hearing.

### **CONCLUSION**

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

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<sup>2</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>3</sup> 20 C.F.R. § 10.617(b).

<sup>4</sup> *Id.* at § 10.622(f).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also* 20 C.F.R. § 10.622(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2016  
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