

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

W.J., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION FACILITY, Rocky Mount, NC,
Employer**

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**Docket No. 15-0777
Issued: February 3, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2015 appellant filed a timely appeal from a January 5, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated April 18, 2014 to the filing of this 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 the claim.²

ISSUE

The issue is whether appellant abandoned a telephonic hearing before an OWCP hearing representative, which was scheduled for December 10, 2014.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant filed a timely request for oral argument, pursuant to 20 C.F.R. § 501.5(b). By order dated August 27, 2015, the Board, after exercising its discretion, denied his request as his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-0777 (issued August 27, 2015).

On appeal, appellant stated that he incorrectly read that OWCP would initiate the telephone conference call. He contended that the evidence of record established that he sustained an injury at work.

FACTUAL HISTORY

On July 21, 2013 appellant, then a 64-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured the back of his head, his hand, right elbow, neck, buttocks, and back when he fell backward while putting on a drive belt and hit his head on the floor.

By letter dated March 14, 2014, OWCP stated that when appellant's claim was first received, it appeared to be a minor injury, which resulted in minimal or no lost time from work, and payment of a limited amount of medical expenses was administratively approved. It reopened the claim for consideration because he was requesting further medical treatment. OWCP informed appellant that the evidence submitted was insufficient to establish that the incident or employment factor occurred as alleged or how his injury resulted in the diagnosed condition. It instructed him regarding the medical and factual evidence needed, provided him a series of questions to answer, and afforded him 30 days to respond to its inquiries.

By decision dated April 18, 2014, OWCP denied appellant's claim as it found he failed to establish fact of injury. Specifically, it found none of the medical evidence submitted by him established that the diagnosed condition was causally related to the July 21, 2013 employment incident.

On May 14, 2014 OWCP received appellant's May 5, 2014 request for an oral hearing before an OWCP hearing representative.

On October 29, 2014 OWCP notified appellant that a hearing would be held on December 10, 2014 at 9:00 a.m. Eastern Standard Time (EST). It instructed him to call the provided toll-free number a few minutes before the scheduled hearing time and enter in a pass code when prompted.

By decision dated January 5, 2015, OWCP's Branch of Hearings and Review found that appellant had abandoned his hearing request. It found that he received written notification of the hearing 30 days in advance, but failed to appear. The Branch of Hearings and Review further determined that nothing in the record established that appellant contacted, or attempted to contact, OWCP either prior to or subsequent to the scheduled hearing to explain his failure to participate. It concluded that he had abandoned his hearing request.

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.³ Unless

³ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

otherwise directed in writing by the claims examiner, an OWCP 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 notice of a scheduled hearing to a claimant.⁵

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁶ With respect to abandonment of hearing requests, Chapter 2.1601.6(g) of OWCP procedure manual provides 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.⁷ Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his request for a hearing and return the case to the district office.⁸

ANALYSIS

Following OWCP's April 18, 2014 decision denying his claim, appellant timely requested a telephonic hearing before an OWCP hearing representative. On October 29, 2014 OWCP notified appellant that his hearing was scheduled for December 10, 2014 at 1:00 p.m., EST. It provided a toll-free number and a pass code to use at the time of the 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. As he did not appear and did not comply with OWCP's requirements regarding requesting postponement and/or rescheduling within the allotted time, the Board finds that OWCP properly determined that he had abandoned his hearing request.

On appeal, appellant provided an explanation as to why he did not appear for the scheduled telephone hearing. However, the Board concludes that this explanation constitutes new evidence which the Board is precluded from reviewing for the first time on appeal.⁹

Appellant further contends on appeal that he established that he sustained an employment-related injury. However, as noted above, the Board does not have jurisdiction over the merits of his claim. The only issue on appeal is whether appellant abandoned a telephonic hearing on December 10, 2014. As the Board has found, there is no evidence of record that he

⁴ 20 C.F.R. § 10.617(b).

⁵ See also *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁶ *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁷ 20 C.F.R. § 10.622(f).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁹ See 20 C.F.R. § 501.2(c)(1).

followed any of OWCP's protocols relative to the scheduled telephone hearing. Thus, the Board finds that appellant abandoned his request for an oral hearing.¹⁰

CONCLUSION

The Board finds that appellant abandoned his request for a telephonic hearing before an OWCP hearing representative, which was scheduled for December 10, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 5, 2015 is affirmed.¹¹

Issued: February 3, 2016
Washington, DC

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

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

¹⁰ *C.H.*, Docket No. 14-620 (issued June 25, 2014).

¹¹ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.