

ISSUE

The issue is whether appellant abandoned a telephonic hearing before an OWCP hearing representative which was scheduled for December 14, 2015.

FACTUAL HISTORY

On October 31, 2005 appellant, then a 48-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left foot, both knees, and lower back when she slipped on a wet floor while getting coffee for a patient.

OWCP accepted the claim for left foot contusion, left ankle sprain/strain, bilateral knee contusion, and back contusion. The claim was subsequently expanded to include left Achilles tendinitis and bilateral knee osteoarthritis. OWCP authorized Achilles tendon repair surgery which occurred on March 20, 2006; right knee arthroscopic surgery, partial medial and lateral meniscectomy, and resection of medial plica with synovectomy, which occurred on February 8, 2007; left knee arthroscopic surgery and partial lateral and medial meniscectomy with synovectomy, which occurred on March 29, 2007; and bilateral arthroscopy with partial medial meniscectomy with chondroplasty medial femoral condyle, which was performed on August 15, 2013. Appellant was placed on the periodic rolls for temporary duty beginning December 16, 2005. She returned to full-duty work on August 14, 2006 and stopped work again on January 16, 2007. On May 14, 2007 appellant returned to work as a medical support assistant working four hours per day before stopping work on June 13, 2007.³

In a letter dated March 21, 2015, appellant requested that OWCP expand acceptance of her claim to include lumbar and cervical bulging discs and degenerative back disc.

By decision dated April 21, 2015, OWCP denied appellant's request to expand her claim to include back bulging discs at L4-5 and L5-S1 and degenerative lumbar disc.

On May 20, 2015 OWCP received appellant's request for an oral hearing before an OWCP hearing representative.

On November 4, 2015 OWCP notified appellant that a hearing would be held on December 14, 2015 at 11:00 a.m. Eastern Standard Time (EST). It instructed her to call the provided toll-free number a few minutes before the hearing time and enter a pass code when prompted.

³ Appellant filed claims for a schedule award (Form CA-7). By decision dated June 24, 2009, OWCP granted appellant a schedule award for 15 percent right lower extremity permanent impairment and 7 percent left lower extremity permanent impairment. As appellant had previously received a schedule award for 15 percent right lower extremity permanent impairment, OWCP determined that she was not entitled to an additional schedule award for right lower extremity permanent impairment. By decision dated February 14, 2013, OWCP granted appellant a schedule award for an additional 11 percent left lower extremity permanent impairment. On February 24, 2014 it granted her a schedule award for an additional two percent left lower extremity permanent impairment and two percent right lower extremity permanent impairment.

By decision dated January 5, 2016, OWCP's Branch of Hearings and Review found that appellant abandoned her hearing request. It found that she 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 her failure to participate. It concluded that she had abandoned her 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.⁴ Unless 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.⁵ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁶

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

ANALYSIS

Following OWCP's April 21, 2015 decision denying her request to expand her claim to include additional conditions, appellant requested a telephonic hearing before an OWCP hearing representative. On November 4, 2015 OWCP notified appellant, by mail, that her hearing was scheduled for December 14, 2015 at 11:00 a.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 of the scheduled date of the hearing

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

⁵ 20 C.F.R. § 10.617(b).

⁶ See *R.C.*, 59 ECAB 521 (2008); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁷ *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Claudia J. Whitten*, 52 ECAB 483 (2001).

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

On appeal, appellant stated that she incorrectly read that OWCP would initiate the telephone conference call and she was unsure whether she had provided her landline or cell phone number. She related that December is a difficult time for her due to the death of her husband on December 31, 2007 and her son on August 6, 2008. As noted above, the Board does not have jurisdiction over the merits of appellant's claim. The only issue on appeal is whether she abandoned a telephonic hearing on December 14, 2015. There is no evidence of record that appellant requested a postponement or that she informed OWCP within 10 days following the scheduled date of the hearing regarding her mistaken belief that OWCP would be calling her on the date and time in question. The record substantiates that appellant did not appear at the scheduled hearing. The Board therefore finds that appellant abandoned her request for an oral hearing.⁹

CONCLUSION

The Board finds that appellant abandoned her request for an oral hearing before an OWCP hearing representative on December 14, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 5, 2016 is affirmed.

Issued: July 5, 2016
Washington, DC

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

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

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

⁹ C.H., Docket No. 14-620 (issued June 25, 2014).