

ISSUE

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

FACTUAL HISTORY

On January 23, 2015 appellant, then a 53-year-old equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on January 12, 2015 she sustained a fractured right toe in the performance of duty. She alleged that she began to feel right foot pain after constantly jumping from the hard surface of a power jack onto concrete without matting.

By decision dated March 26, 2015, OWCP denied appellant's claim because the evidence of record did not support that the injury occurred as described.

On April 20, 2015 appellant requested an oral hearing before an OWCP hearing representative.

In a May 21, 2015 letter, OWCP notified appellant that a video teleconference hearing was scheduled for July 7, 2015 at 2:30 p.m. It provided the address of the video teleconference location. The notice was mailed to appellant's address of record.

Appellant did not appear at the scheduled hearing.

By decision dated July 28, 2015, OWCP found that appellant abandoned her request for a hearing. The decision noted that the hearing was scheduled for July 7, 2015, but appellant failed to appear as instructed. The decision also found that there was no indication that appellant contacted OWCP prior or subsequent to the scheduled hearing to explain her failure to participate. OWCP concluded that appellant abandoned her hearing request.

On appeal appellant contends that she missed the hearing because of a family commitment. She notes that OWCP's letter advised that a medical emergency was the only justification for rescheduling the 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.³ 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.⁴ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁵

³ *Id.* at § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁴ 20 C.F.R. § 10.617(b).

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

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.⁶

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.⁷

ANALYSIS

By decision dated March 26, 2015, OWCP denied appellant's traumatic injury claim. Appellant submitted a timely request for a hearing. In a May 21, 2015 letter, OWCP notified appellant of the time and location for the July 7, 2015 scheduled hearing. The notice was mailed to appellant's address of record. Appellant did not appear at the prescribed 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 July 7, 2015. The Board, therefore, finds that appellant abandoned her request for a hearing.

On appeal appellant contends that she missed the hearing because of a family commitment. There is no evidence, however, that she contacted OWCP to provide this information within 10 days of the scheduled hearing. The Board is precluded from reviewing evidence not before OWCP at the time it issued its final decision.⁸

CONCLUSION

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

⁶ 20 C.F.R. § 10.622(f).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁸ *See* 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2016
Washington, DC

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

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

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