



## **FACTUAL HISTORY**

On February 12, 2015 appellant, then a 45-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced daily migraines from exposure to vehicle fumes. She stopped work on February 11, 2015.

By decision dated June 15, 2015, OWCP denied appellant's claim as the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted employment factor.

Appellant, on July 14, 2015, requested a telephone hearing before an OWCP hearing representative.

On January 27, 2016 OWCP notified appellant that it would hold a telephone hearing on March 7, 2016 at 1:00 p.m. Eastern Standard Time. It instructed her to call the provided toll-free number and enter a pass code when prompted.

In a decision dated March 17, 2016, OWCP's Branch of Hearings and Review found that appellant had abandoned her hearing request. It determined that she received written notification of the hearing 30 days in advance, but failed to appear. The Branch of Hearings and Review further found that appellant had failed to contact OWCP either before or after the scheduled hearing to explain her absence.

On appeal appellant maintains that she did not abandon her hearing, but instead telephoned at 2:00 p.m. as she lived in the Central Standard Time zone and was trying to adjust for Eastern Standard Time.

## **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 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.<sup>3</sup> OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.<sup>4</sup>

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.<sup>5</sup> With respect to abandonment of hearing requests, OWCP's procedures provides in relevant part that failure of the claimant to appear at the scheduled

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

<sup>3</sup> 20 C.F.R. § 10.617(b).

<sup>4</sup> *See R.C.*, 59 ECAB 521 (2008); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>5</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Claudia J. Whitten*, 52 ECAB 483 (2001).

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.<sup>6</sup>

### ANALYSIS

In a decision dated June 15, 2015, OWCP denied appellant's occupational disease claim after finding that the medical evidence was insufficient to establish that her migraines were causally related to factors of her federal employment. Appellant timely requested a telephone hearing before an OWCP hearing representative on July 14, 2015. On January 27, 2016 OWCP's Branch of Hearings and Review notified appellant, by mail, that it had scheduled her telephone hearing for March 7, 2016 at 1:00 p.m. Eastern Standard Time. It provided a toll-free number and a pass code to use at the time of the hearing. Appellant did not request a postponement and did not call in for the scheduled hearing. She also did not submit a written request within the 10-day period following the scheduled hearing explaining her absence and asking that another hearing be scheduled.<sup>7</sup> Accordingly, the Board finds that appellant abandoned her request for a hearing.

On appeal appellant relates that she telephoned for the scheduled hearing an hour late because she incorrectly adjusted for Eastern Standard Time. There is no evidence, however, that she provided this information to OWCP within 10 days of the scheduled hearing. The Board is limited to reviewing only that evidence which was before OWCP at the time it rendered its decision. 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). The record substantiates that appellant did not appear at the scheduled hearing after proper notice had been provided. The Board therefore finds that she abandoned her request for a telephone hearing.<sup>8</sup>

### CONCLUSION

The Board finds that appellant abandoned her request for a telephone hearing before an OWCP hearing representative.

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

<sup>7</sup> 20 C.F.R. § 10.622(f).

<sup>8</sup> See *L.D.*, Docket No. 16-0316 (issued April 13, 2016); *S.J.*, Docket No. 16-0670 (issued July 5, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2017  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board