

FACTUAL HISTORY

On July 6, 2015 appellant, then a 53-year-old attorney adviser, filed a traumatic injury claim (Form CA-1) alleging that on July 2, 2015 she sustained a bilateral knee injury due to scooting forward in her chair which did not have wheels.²

In a report dated July 10, 2015, Dr. Randall E. Yee, an osteopath, Board-certified in orthopedic surgery, related that appellant presented for bilateral knee pain which began on July 2, 2015. He related that, on that date, she had experienced problems scooting her chair to her computer and felt knee pain. Dr. Yee reported physical examination findings and noted that x-ray evaluation showed bilateral degenerative joint disease of the knees.

On April 13, 2016 appellant filed a notice of recurrence (Form CA-2a) alleging disability and requesting medical treatment. In support of her claim, she submitted medical evidence dated June 10 through August 24, 2015.

By letter dated June 8, 2016, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as her claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of appellant's claim had not been formally considered and her claim had been reopened for consideration of the merits because the medical bills had exceeded \$1,500.00. OWCP informed her that the evidence of record was insufficient to establish her traumatic injury claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to submit the additional evidence.

In response to OWCP's development letter, appellant submitted additional medical evidence. OWCP received progress notes from a physician assistant, diagnostic reports following a magnetic resonance imaging scan, and a June 7, 2016 report from Dr. Yee, who noted appellant's physical examination findings, and related that diagnostic ultrasound showed bilateral knee degenerative disc disease and bilateral medial meniscus tears of the knees.

By decision dated August 5, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that the diagnosed condition was causally related to the accepted July 2, 2015 employment incident.

On August 31, 2016 appellant requested an oral hearing before an OWCP hearing representative.

By letter dated March 20, 2017, OWCP notified appellant that her hearing would be held on April 19, 2017 at 12:45 p.m. (Eastern Standard Time). It advised that given her geographical location, the issue involved in her case, and the number of hearing requests in her area, it had been determined that her oral hearing would be conducted by telephone pursuant to 20 C.F.R. § 10.615. OWCP instructed appellant to call the provided toll-free number a few minutes before the scheduled hearing time and enter a passcode when prompted.

² The record does not indicate whether appellant stopped work following her injury.

By letter dated April 19, 2017, received on April 28, 2017, appellant notified OWCP that she called the provided toll-free number several times to attend the hearing scheduled on April 19, 2017, but she was unable to connect with anyone. Following her last call at 12:30 p.m., she was given a message stating, "Access to this hearing is restricted." Appellant requested that OWCP reschedule her for an in-person hearing since it was nearly impossible to have a hearing by a telephone.

By decision dated May 1, 2017, a hearing representative of OWCP's Branch of Hearings and Review found that appellant had abandoned her hearing request. He found that she received written notification of the April 19, 2017 hearing 30 days in advance, but failed to appear. The hearing representative further determined that nothing in the case 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. He 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.³ 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.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 is considered abandoned under very limited circumstances.⁶ With respect to abandonment of hearing requests, Chapter 2.1601.6(g) of OWCP's procedures⁷ and section 10.622(f) of its regulations⁸ provide 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 his or her request for a hearing and return the case to the district office.⁹

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

⁴ *Id.* at § 10.617(b).

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

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

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

⁸ 20 C.F.R. § 10.622(f).

⁹ *See supra* note 7.

ANALYSIS

Following OWCP's August 5, 2016 decision denying her traumatic injury claim, appellant requested an oral hearing before an OWCP hearing representative. OWCP scheduled a telephonic hearing on April 19, 2017 and provided proper notice, but she did not appear by telephone. By decision dated May 1, 2017, a hearing representative of OWCP's Branch of Hearings and Review found that appellant had abandoned her hearing request and further determined that nothing in the record established that she contacted, or attempted to contact, OWCP either prior to or subsequent to the scheduled hearing to explain her failure to participate.

The Board finds that this case is not in posture for decision.¹⁰ The question before the Board is whether all three of the conditions for finding abandonment are present. Two of the three conditions are present: appellant did not request postponement; and appellant failed to appear at the scheduled hearing. The third condition is not present, however, as the hearing representative failed to address appellant's April 19, 2017 letter which notified OWCP of her failure to attend the scheduled hearing. This statement was received on April 28, 2017, within 10 days of the scheduled hearing, and prior to the May 1, 2017 decision. Because the Board decisions are final with regard to the subject matter appealed,¹¹ it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.¹² As OWCP did not review this relevant evidence, the Board finds that this case is not in posture for decision.¹³ The Board will set aside the OWCP's May 1, 2017 abandonment decision and remand the case for appropriate action.

CONCLUSION

The Board finds that the case is not in posture for decision

¹⁰ *N.M.*, Docket No. 07-1432 (issued May 5, 2008).

¹¹ 20 C.F.R. § 501.6(d).

¹² *See William A. Couch*, 41 ECAB 548, 553 (1990).

¹³ *See H.H.*, Docket No. 14-1985 (issued June 26, 2015).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision of the Board.

Issued: October 5, 2017
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