

FACTUAL HISTORY

On January 4, 2017 appellant, then a 38-year-old dental hygienist, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment. She indicated that she performed modified work duties after reporting the claim on January 4, 2017.

By decision dated April 3, 2017, OWCP denied appellant's occupational disease claim. It found that the medical evidence submitted was insufficient to establish that she sustained a diagnosed condition causally related to the accepted work factors.

Appellant, on April 18, 2017, requested an oral hearing before an OWCP hearing representative. On August 10, 2017 OWCP determined that, based on her geographical location and the issue involved, it would conduct her oral hearing by telephone. It advised appellant that it had scheduled her telephone hearing for September 12, 2017 at 12:15 p.m. Eastern Standard Time (EST).

OWCP noted that appellant had a new address and by letter dated September 19, 2017, it informed her that it had scheduled a telephone hearing for October 16, 2017 at 2:45 p.m. EST.

OWCP, in a September 20, 2017 letter, again notified appellant that it had scheduled her telephone hearing for October 16, 2017 at 2:45 p.m. EST. In another September 20, 2017 letter, it advised her that it had rescheduled the telephone hearing from October 16 to 20, 2017 at 11:00 a.m. EST. The hearing notice included a toll-free number and pass code to enable access to the telephone hearing.

On October 2, 2017 OWCP informed appellant that it had changed the time for the telephone hearing set for October 20, 2017 from 11:00 a.m. to 12:15 p.m. EST to allow for the time difference between Washington, DC and her geographical location.

An October 20, 2017 telephone memorandum (Form CA-110) indicated that appellant telephoned OWCP on that date. OWCP advised that it had sent notice of her rescheduled hearing to her new address and changed the time to 12:15 p.m. EST. It noted that appellant did not telephone for the scheduled hearing at 12:15 p.m. EST.

By decision dated October 31, 2017, OWCP determined that appellant had abandoned her request for a telephone hearing before an OWCP hearing representative. It found that she had received written notice of the telephone hearing 30 days before the scheduled hearing, but that she failed to attend or contact the Branch of Hearings and Review either before or after the scheduled hearing to explain her absence.

On appeal appellant contends that she now has medical evidence supporting her claim and notes that her physician has diagnosed additional employment-related conditions.

LEGAL PRECEDENT

Under FECA and its implementing regulations, a claimant who has received a final adverse decision from OWCP may obtain a hearing by writing the address specified in the decision within

30 days of the date of the decision for which a hearing is sought.² Unless otherwise directed, in writing by the claimant, 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.³ OWCP has the burden of proving that it mailed to appellant and his or her representative a notice of a scheduled hearing.⁴

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁵ With respect to abandonment of hearing requests, Chapter 2.1601(g) of OWCP's procedures⁶ and section 10.622(f) of its regulations⁷ 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.⁸

ANALYSIS

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

OWCP, in response to appellant's timely request for an oral hearing, initially advised her on August 10, 2017 that it had scheduled a telephone hearing for September 12, 2017 at 12:15 p.m. EST. On September 19, 2017 it noted that she had a new mailing address and informed her that it had scheduled a telephone hearing for October 16, 2017 at 2:45 p.m. EST. On September 20, 2017 OWCP again mailed appellant a notice that it had scheduled a telephone hearing on October 16, 2017 at 2:45 p.m. EST. In another letter dated September 20, 2017, it advised her that it had rescheduled the telephone hearing to October 20, 2017 at 11:00 a.m. EST. By letter dated October 2, 2017, OWCP informed appellant that it had rescheduled the time for the October 20, 2017 telephone hearing from 11:00 a.m. to 12:15 p.m. EST.

OWCP's regulations provide that it must mail appellant a notice of the time, place, and method of hearing at least 30 days prior to the scheduled hearing unless otherwise directed by the

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

³ *Id.* at § 10.617(b). OWCP procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(b) (October 2011).

⁴ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991); see also *K.D.*, Docket No. 11-0077 (issued August 18, 2011).

⁵ *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁶ Federal (FECA) Procedure Manual, *supra* note 3 at Chapter 2.1601.6(g) (October 2011).

⁷ 20 C.F.R. § 10.622(f).

⁸ See *supra* note 6.

claimant.⁹ Its procedures provide that it must send a written notice “specifying the exact date, time, format, and place for the hearing” at least 30 days before the scheduled hearing.¹⁰ OWCP, however, did not provide appellant with written notice of the exact time of the October 20, 2016 telephone hearing scheduled until October 2, 2017, less than the required 30 days. As it did not comply with its procedures, the Board finds that it improperly determined that appellant abandoned her hearing request and the case will be remanded to the Branch of Hearings and Review to schedule another hearing.¹¹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2017 decision of the Office of Workers’ Compensations Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: October 3, 2018
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 20 C.F.R. § 10.617(b).

¹⁰ See Federal (FECA) Procedure Manual, *supra* note 3 at Chapter 2.1601.6(b); see also *T.C.*, Docket No. 17-1059 (issued August 18, 2017).

¹¹ *Id.* Additionally, it appears from the record that appellant contacted OWCP on October 20, 2016, the date of the hearing.