

FACTUAL HISTORY

On May 8, 2003 appellant, then a 37-year-old medical support clerk, filed an occupational disease claim alleging that she sustained injury to her arms and hands due to engaging in extensive typing. The Office accepted that she sustained bilateral carpal tunnel syndrome.

On September 24, 2004 appellant underwent right carpal tunnel release surgery which was authorized by the Office. She stopped work in September 2004 and began to receive disability compensation. On October 24, 2005 appellant returned to light-duty work for the employing establishment as a medical support assistant. In a January 10, 2006 decision, the Office determined that appellant's wages as a medical support assistant fairly and reasonably represented her wage-earning capacity.

In a January 12, 2006 notice, the Office advised appellant of its preliminary determination that she received a \$3,455.26 overpayment of compensation during the period October 24 to December 24, 2005 because she continued to receive Office compensation after she returned to work. The Office also made a preliminary determination that appellant was at fault in the creation of the overpayment. It advised her that she could request waiver of the overpayment and that she could take various actions including requesting a prerecoupment hearing before an Office hearing representative.

On January 27, 2006 appellant indicated that she wished to request waiver of the overpayment and requested a prerecoupment hearing with an Office hearing representative regarding this matter.²

In an April 13, 2006 decision, the Office denied appellant's request for authorization of left carpal tunnel release surgery.

In a July 25, 2006 letter, the Office advised appellant that an oral hearing would be held with an Office hearing representative at 3:00 p.m. on October 19, 2006. The hearing was to be held at a federal courthouse in Shreveport, LA. The letter was sent to appellant's last address of record in Deridder, LA and advised her of the procedures for requesting postponement of the hearing.³

In a November 3, 2006 decision, the Office determined that appellant abandoned her hearing request. The Office found that appellant did not appear for the hearing scheduled for October 19, 2006 and did not contact the Office, before or after the scheduled date for the hearing, to explain her failure to appear.⁴

² Appellant also submitted a completed overpayment recovery questionnaire that had been provided by the Office.

³ The record also contains a draft notice for an August 31, 2006 hearing in Houston, TX. It does not appear that this notice was sent to appellant.

⁴ The Office inadvertently listed the place for the hearing as Pensacola, FL rather than Shreveport, LA. It appears that appellant moved to Leesville, LA after the Office issued its November 3, 2006 decision.

LEGAL PRECEDENT

The authority governing abandonment of hearings rests with the Office procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

“Under these circumstances, H&R [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 DO [district Office]. In cases involving precoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

“This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”⁵

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and paid her compensation for periods of disability. In a January 12, 2006 notice, the Office advised appellant of its preliminary determination that she received a \$3,455.26 overpayment of compensation because she continued to receive Office compensation after she returned to work. Appellant requested a hearing with an Office hearing representative regarding this matter and such a hearing was scheduled for October 19, 2006 in Shreveport, LA.

The Office scheduled an oral hearing before an Office hearing representative at a specific time and place on October 19, 2006. The record shows that the Office mailed appropriate notice to the claimant at her last known address. The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.⁶

The Board notes that Office procedures state that, in situations involving the abandonment of a prerecoument hearing, the Office's H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the district Office.⁷ Consequently, upon return of the case record, the Office, pursuant to its established procedures, shall refer the matter to the H&R for an appropriate final decision on the alleged overpayment of compensation.

CONCLUSION

The Board finds that the Office properly determined that appellant abandoned her hearing.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 3, 2006 decision is affirmed, as modified.

Issued: May 31, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ See also *Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

⁷ See *supra* note 5.