

In a decision dated October 11, 2006, the Office terminated appellant's compensation on the grounds that she refused suitable work. On October 19, 2006 she requested an oral hearing before an Office hearing representative. On February 23, 2007 the Office sent appellant a properly addressed notice that the oral hearing was scheduled for March 28, 2007.

In a decision dated March 29, 2007, the hearing representative found that appellant failed to appear. Further noting no evidence that appellant contacted the Office prior or subsequent to the scheduled hearing to explain her failure to appear, the hearing representative found that she abandoned her request for a hearing.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”¹

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.²

Office procedures state:

“(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 pre-recoupment 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.

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. § 10.616(a) (1999).

“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.”³

ANALYSIS

Appellant made her request for an oral hearing within 30 days of the Office’s October 11, 2006 decision terminating her compensation. Her request was timely and entitled her to a hearing as a matter of right. The Office scheduled an oral hearing on March 28, 2007 and provided proper notice, but appellant did not appear. Because a hearing can be considered abandoned only under certain circumstances, 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 she failed to appear at the scheduled hearing. The third condition is not present. The hearing representative issued a formal decision finding abandonment on March 29, 2007, only one day after the scheduled date of the hearing. Appellant had no opportunity to provide “notification for such failure” within 10 days of the scheduled date of the hearing. Therefore, the Office’s finding of abandonment is not supported under these circumstances. The Board will set aside the Office’s March 29, 2007 abandonment decision and will remand the case for appropriate action.

CONCLUSION

The Board finds that the Office’s March 29, 2007 decision on abandonment is not supported by the evidence.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e. (January 1999).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: May 5, 2008
Washington, DC

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

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

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