

On appeal, appellant contends that he was 15 minutes late in making the telephone conference call and that he called several times, but was unable to get through. He also stated that he left three messages with his claims examiner explaining the situation, but never received any response.

FACTUAL HISTORY

On March 26, 2014 appellant, then a 57-year-old aircraft mechanical parts repairman, filed an occupational disease claim alleging that the continued use of a supplied air hood caused a neck strain. He first realized that his condition was caused or aggravated by his employment on March 10, 2014.

Following the development of the evidence, by decision dated July 9, 2014, OWCP denied the claim as the medical component of fact of injury was not established.

On July 28, 2014 OWCP received appellant's July 22, 2014 request for a telephonic hearing before OWCP's Branch of Hearings and Review.

By letter dated January 7, 2015, OWCP's Branch of Hearings and Review notified appellant that a telephone hearing was scheduled for February 10, 2015 at 1:00 p.m. eastern standard time (EST). It instructed him to call the provided toll-free number a few minutes before the hearing time and enter in a pass code when prompted.

By decision dated March 9, 2015, OWCP's Branch of Hearings and Review found that appellant abandoned his requested hearing. It found that he received written notification of the hearing 30 days in advance, but failed to appear. The Branch of Hearings and Review further determined that nothing in the record established that appellant contacted, or attempted to contact, OWCP, either prior to or subsequent to the scheduled hearing to explain his failure to participate. It concluded that he had abandoned his 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, 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.⁴ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁵

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

⁴ 20 C.F.R. § 10.617(b).

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

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁶ With respect to abandonment of hearing requests, Chapter 2.1601.6(g) of OWCP's procedure manual provides 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.⁷

ANALYSIS

Following OWCP's July 9, 2014 decision denying his claim, appellant requested a telephonic hearing before an OWCP hearing representative. On January 7, 2015 OWCP notified appellant that his hearing was scheduled for February 10, 2015 at 1:00 p.m., EST. It provided a toll-free number and a pass code to use at the time of the hearing. Appellant did not request a postponement, failed to call in at the scheduled hearing, and failed to provide any notification for such failure to OWCP within 10 days of the scheduled date of the hearing.

On appeal, appellant contends that he was 15 minutes late in making the telephone conference call. He later stated that he called several times, but was unable to get through. Appellant also stated that he left three messages with his claims examiner explaining the situation, but never received a response. There is no evidence of record that he provided this information to OWCP within 10 days of the scheduled date of the hearing. The Board finds that appellant abandoned his request for an oral hearing.⁸

CONCLUSION

The Board finds that appellant abandoned his request for an oral hearing before an OWCP hearing representative on February 10, 2015.

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 *C.H.*, Docket No. 14-620 (issued June 25, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 9, 2015 is affirmed.

Issued: August 13, 2015
Washington, DC

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

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

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