

**United States Department of Labor
Employees' Compensation Appeals Board**

C.R., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Milwaukee, WI, Employer)

**Docket No. 16-1017
Issued: August 23, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 14, 2016 appellant filed a timely appeal from the March 21, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision of OWCP dated October 14, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant abandoned a telephonic hearing before an OWCP hearing representative, which was scheduled for March 11, 2016.

On appeal, appellant stated that he missed his telephone appointment due to the heavy medication he was taking for a right ankle injury he sustained on August 20, 2014.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² In an order dated December 9, 2015, the Board remanded the case for OWCP to send proper notice of appellant's telephonic hearing to his correct address of record. The relevant facts are set forth below.

On August 22, 2014 appellant, then a 40-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2014 he rolled his right ankle as he stepped out of his plumbing vehicle.

Progress notes dated August 20, 2014 addressed appellant's right ankle condition and medical treatment.

By letter dated September 11, 2014, OWCP informed appellant of the deficiencies in his claim and requested that he submit additional evidence. Appellant was afforded 30 days to respond. No response was received.

In an October 14, 2014 decision, OWCP denied appellant's claim as he did not submit any medical evidence to establish that a medical condition was diagnosed in connection with the accepted August 22, 2014 employment incident.

Following the Board's December 9, 2015 remand order appellant requested an oral hearing, OWCP notified appellant on February 4, 2016 that a hearing would be held on March 11, 2016 at 5:45 p.m. Eastern Standard Time (EST). It instructed him to call the provided toll-free number a few minutes before the scheduled hearing time and enter in a pass code when prompted.

By decision dated March 21, 2016, a hearing representative of OWCP's Branch of Hearings and Review found that appellant had abandoned his hearing request. It found that he received written notification of the hearing 30 days in advance, but failed to appear. The hearing representative 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, 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

² *Order Remanding Case*, Docket No. 15-1409 (issued December 9, 2015).

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

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 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 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

ANALYSIS

The Board previously remanded appellant's case for OWCP to send proper notice of his requested telephonic hearing, regarding the denial of his traumatic injury claim, to his correct address of record. Following the Board's December 9, 2015 remand order, OWCP notified appellant that his hearing was scheduled for March 11, 2016 at 5:45 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. As he did not appear and did not comply with OWCP's requirements regarding requesting postponement and/or rescheduling within the allotted time, the Board finds that OWCP properly determined that he had abandoned his hearing request.

On appeal, appellant states that he missed his telephone appointment due to the heavy medication he was taking for a right ankle injury he sustained on August 20, 2014. However, he did not advise OWCP in writing of these circumstances within 10 days after the date set for the hearing and request that another hearing be scheduled.

CONCLUSION

The Board finds that appellant abandoned his request for a telephonic hearing before an OWCP hearing representative which was scheduled for March 11, 2016.

⁴ 20 C.F.R. § 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 at Chapter 2.16016(g).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2016
Washington, DC

Christopher J. Godfrey, 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