



## ISSUE

The issue is whether appellant abandoned her request for an oral hearing before an OWCP hearing representative.

## FACTUAL HISTORY

On July 11, 2015 appellant, then a 51-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained a torn rotator cuff as a result of constantly lifting, pulling, and handling heavy packages. By decision dated October 7, 2015, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the factors of employment as alleged. OWCP further noted that the evidence failed to establish a diagnosed medical condition causally related to appellant's federal employment.

On November 2, 2015 appellant requested a telephonic hearing before an OWCP hearing representative. By letter dated May 17, 2016, OWCP informed her that her telephonic hearing would be held on July 7, 2016 at 8:30 a.m. (Eastern Standard Time). Appellant was provided the toll free telephone number to call, as well as an appropriate passcode. However, she neither called into the hearing at the appointed time, nor contacted OWCP within the requisite 10 days thereafter.

By decision dated July 25, 2016, OWCP determined that appellant had abandoned her request for oral hearing before an OWCP hearing representative. It noted that she was properly provided written notification of the hearing 30 days in advance, yet she failed to appear. OWCP further noted that appellant failed to contact OWCP either prior to or subsequent to the scheduled hearing to explain her failure to appear.

## LEGAL PRECEDENT

A claimant who has received a final adverse decision by 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.<sup>3</sup> 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.<sup>4</sup> OWCP has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.<sup>5</sup>

A hearing before OWCP's Branch of Hearings and Review can be considered abandoned only under very limited circumstances.<sup>6</sup> With respect to abandonment of hearing requests,

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<sup>3</sup> 20 C.F.R. § 10.616(a).

<sup>4</sup> *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.

<sup>5</sup> See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991); see also *K.D.*, Docket No. 11-77 (issued August 18, 2011).

<sup>6</sup> *Claudia J. Whitten*, 52 ECAB 483 (2001).

Chapter 2.1601(g) of OWCP's procedures<sup>7</sup> and section 10.622(f) of its regulations<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant had abandoned her request for an oral hearing before an OWCP hearing representative.

The record establishes that on May 17, 2016, in response to appellant's timely request for an oral hearing, OWCP's Branch of Hearings and Review mailed to appellant's known address a notice of telephonic hearing, which was scheduled to be held on July 7, 2016 at 8:30 a.m. (Eastern Standard Time). As the Board has held, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.<sup>10</sup> The Board notes that the notice was sent more than 30 days prior to the scheduled hearing date. The record establishes that appellant did not appear at the appointed time. Furthermore, she did not request a postponement of the hearing or explain her failure to appear at the hearing, within 10 days of the scheduled hearing. Thus, the Board finds that appellant abandoned her request for an oral hearing.<sup>11</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing.

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

<sup>8</sup> 20 C.F.R. § 10.622(f).

<sup>9</sup> *See supra* note 7.

<sup>10</sup> *See C.J.*, Docket No. 16-1068 (issued October 21, 2016).

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2017  
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