

ISSUE

The issue is whether OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On March 1, 2022 appellant, then a 70-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2022 she sustained injuries to her knees, right lower leg, and right breast when an 18-wheel gas tanker hit her car while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that she was injured by a third party in the performance of duty. Appellant stopped work on the date of injury.

In a March 16, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed to establish her claim and provided a questionnaire for her completion. In a separate development later of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to submit the necessary evidence.

Appellant subsequently submitted a February 22, 2022 report from Dr. Steve Reeves, a Board-certified family physician, relating that she had knee pain following a February 9, 2022 injury at work. Dr. Reeves' examination revealed no abnormalities. He diagnosed right knee pain. In a February 23, 2022 report, Dr. Reeves indicated that he administered an intra-articular injection to the right knee joint and diagnosed right knee pain. In a work capacity evaluation for musculoskeletal conditions (Form OWCP-5c) dated March 15, 2022, he noted that appellant had right knee pain after the February 9, 2022 employment incident, and restricted her to sedentary duties pending further evaluation *via* a magnetic resonance imaging (MRI) scan.

Appellant underwent a right knee MRI scan on March 25, 2022 which revealed subacute/healing subchondral impaction fracture of the medial tibial plateau, horizontal tear of the posterior horn and body of the medial meniscus, complex tear of the anterior horn and body of the lateral meniscus, and high-grade lateral compartment chondrosis with full-thickness chondral loss.

By decision dated April 27, 2022, OWCP accepted that the February 9, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted employment incident.

Appellant continued to submit evidence, including an emergency department visit summary from Danh Nguyen, a nurse practitioner, and a state collision report, both dated February 9, 2022. OWCP also received an undated attending physician's report (Form CA-20) from Dr. Reeves, relating that appellant had injured her right knee while delivering mail. Dr. Reeves diagnosed right knee pain and indicated that she was partially disabled as of February 9, 2022.

On May 5, 2022 appellant requested a hearing before OWCP's Branch of Hearings and Review.

Appellant submitted a June 28, 2022 postoperative report from Amy King, a nurse, indicating that appellant underwent a right total knee arthroplasty on June 13, 2022 and diagnosing right knee osteoarthritis.

In an August 1, 2022 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for September 8, 2022 at 10:00 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated September 19, 2022, OWCP's hearing representative found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance, but failed to appear. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP may obtain a hearing by 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 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.⁴ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁵

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁶

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

⁵ *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁶ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

ANALYSIS

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

Following OWCP's April 27, 2022 decision denying appellant's traumatic injury claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an August 1, 2022 notice, OWCP's hearing representative notified her that it had scheduled a telephonic hearing for September 8, 2022 at 10:00 a.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.⁷ The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.⁸ As appellant did not request a postponement, and failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that she abandoned her request for an oral hearing.⁹

CONCLUSION

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

⁷ *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

⁸ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board