

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

D.M., Appellant)	
)	
and)	Docket No. 23-0228
)	Issued: August 2, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
ST. CLOUD VA MEDICAL CENTER,)	
St. Cloud, MN, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 3, 2022 appellant filed a timely appeal from a November 25, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated June 3, 2022, 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 over the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 8, 2022 appellant, then a 61-year-old boiler plant operator, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2022 he strained his upper back and right shoulder when he lifted a 50-pound bag of salt from a pallet while in the performance of duty.

In a development letter dated April 21, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence and afforded him 30 days to provide the necessary evidence.

By decision dated June 3, 2022, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the March 29, 2022 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 28, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 20, 2022 notice, OWCP's hearing representative informed appellant that she had scheduled a telephonic hearing for November 8, 2022 at 3:00 p.m. Eastern Standard Time (EST). The notice provided a toll-free telephone number and appropriate passcode for access to the hearing. The hearing representative mailed the notice to appellant at his last known address of record. Appellant did not appear for the hearing or request that another hearing be scheduled.

By decision dated November 25, 2022, OWCP found that appellant had abandoned his request for an oral hearing.

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.² 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.³ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁴

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.

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 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).

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.⁵

ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's June 3, 2022 decision denying appellant's traumatic injury claim, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a September 20, 2022 notice, OWCP's hearing representative notified appellant that she had scheduled a telephonic hearing for November 8, 2022 at 3:00 p.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate. 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.⁶ Appellant failed to appear for the scheduled hearing, and failed to request another hearing within 10 days of the scheduled hearing. The Board, therefore, finds that he abandoned his request for an oral hearing.⁷

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

⁵ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

⁶ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *L.T.*, Docket No. 20-1539 (issued August 2, 2021).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2023
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board