

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

V.D., Appellant)	
)	
and)	Docket No. 23-0487
)	Issued: August 9, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Kansas City, KS, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 26, 2023 appellant filed a timely appeal from a January 24, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision on this issue, dated August 11, 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 to review 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.

FACTUAL HISTORY

On May 17, 2022 appellant, then a 61-year-old postal machine distributor, filed a traumatic injury claim (Form CA-1) alleging that on May 16, 2022 he injured his right shoulder and back

¹ 5 U.S.C. § 8101 *et seq.*

muscles when he lifted several heavy boxes from a sorting belt to place them into cages while in the performance of duty.

OWCP, by decision dated August 11, 2022, denied appellant's traumatic injury claim, finding that he had not submitted sufficient medical evidence to establish a causal relationship between the accepted incident of May 16, 2022 and his diagnosed conditions. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On September 7, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the August 11, 2022 denial decision. He submitted additional evidence in support of his claim.

In a December 2, 2022 notice, OWCP's hearing representative notified appellant that an oral hearing would be conducted by telephone and was scheduled for January 12, 2023 at noon Eastern Standard Time (EST). The hearing representative instructed him to call the provided toll-free number shortly before the scheduled hearing time and enter the passcode when prompted for access to the hearing. A copy of the notice was mailed to appellant at his last known address of record. Appellant did not appear for the telephonic hearing at the appointed time.

By decision dated January 24, 2023, OWCP found that appellant had abandoned his request for an oral hearing because he had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that he had contacted the Branch of Hearings and Review either prior to, or subsequent to, the scheduled hearing to explain his failure to appear.

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 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 said notice to a claimant and any representative of record.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.⁵

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *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); *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).

⁵ 20 C.F.R. § 10.622(f).

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

ANALYSIS

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

Following OWCP's August 11, 2022 decision denying the claim, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a December 2, 2022 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, and was scheduled for January 12, 2023 at 12:00 p.m. EST. The hearing representative mailed the notice to appellant's last known address of record. 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.⁷

Appellant failed to call in for the scheduled hearing at the prescribed time. He did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.⁸

CONCLUSION

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

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also* *L.L.* and *V.C.* *supra* note 4; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

⁷ *See L.L., V.C., and L.T., supra* note 4.

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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