

FACTUAL HISTORY

On January 5, 2022 appellant, then a 56-year-old maintenance engineering specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2022 she injured her right knee when she slipped and fell on ice while walking back to the yard in the performance of duty. She further indicated that, consequently, she was unable to walk on or bend her knee. Appellant stopped work on January 4, 2022. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

By decision dated February 14, 2022, OWCP accepted appellant's claim for a right medial collateral ligament (MCL) sprain. It paid her wage-loss compensation on the supplemental rolls from February 18 through April 24, 2022.

Appellant filed a claim for compensation (Form CA-7) dated August 3, 2022 for leave without pay (LWOP) for disability from work commencing July 31, 2022. It received medical evidence in support of the claim.

By decision dated September 6, 2022, OWCP denied appellant's claim for wage-loss compensation for disability from work commencing July 31, 2022. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to her accepted work-related medical condition.

On September 29, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a January 13, 2023 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for February 17, 2023 at 10:30 a.m. Eastern Standard Time (EST). The notice included the toll-free number and passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant failed to appear for the hearing.

By decision dated March 1, 2023, OWCP 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 noted that there was no indication in the 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 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.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

³ 20 C.F.R. § 10.616(a).

date.⁴ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.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.⁶ 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. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.⁷ Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision, finding that the claimant abandoned the request for a hearing.⁸

ANALYSIS

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

Following OWCP's September 6, 2022 decision denying appellant's compensation claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a January 13, 2023 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for February 17, 2023 at 10:30 a.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.⁹

Appellant failed to call in for the scheduled hearing at the prescribed time. She 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. As appellant 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 OWCP properly determined that she abandoned her request for an oral hearing.¹⁰

⁴ *Id.* at § 10.617(b).

⁵ *W.R.*, Docket No. 22-1016 (issued September 30, 2022); *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *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).

⁶ 20 C.F.R. § 10.622(f).

⁷ *Id.*

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

⁹ *See M.S.*, *L.L.*, and *V.C.*, *supra* note 5.

¹⁰ *Id.*

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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