

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

V.P., Appellant)	
)	
and)	Docket No. 21-0499
)	Issued: May 15, 2023
U.S. POSTAL SERVICE, SPOKANE)	
WASHINGTON PROCESSING &)	
DISTRIBUTION CENTER, Spokane, WA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 28, 2021 appellant filed a timely appeal from an October 1, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated April 27, 2020, 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 her request for an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 24, 2020 appellant, then a 47-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained rheumatoid arthritis in her right wrist due to factors of her federal employment making it difficult to do simple things like shifting gears while driving. She noted that she first became aware of her condition and first realized its relation to her federal employment on January 6, 2001. Appellant did not stop work.

In a March 25, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a March 13, 2020 accident report, B.B., appellant's supervisor, reported that appellant had previously worked in automation and was assigned to waste mail following submission of paperwork related to her rheumatoid arthritis condition. He went on to recount that appellant reported a worsening of her condition from her repetitive employment duties, noting a bilateral wrist injury due to the stress of feeding and sweeping machines, lifting heavy trays and tubs, and gripping and grasping mail. Photographs were provided documenting appellant's various employment duties.

In a March 25, 2020 narrative statement, appellant explained that she had previously provided the employing establishment medical reports related to her condition in order to take leave through the Family and Medical Leave Act (FMLA). On January 3, 2020 she was assigned to waste mail after providing the employing establishment her medical restrictions. On February 25, 2020 B.B. informed appellant that she should have filed an accident report for her wrist at the time she was diagnosed. On March 11, 2020 he assisted her in filing a Form CA-2 for her right wrist injury.

By decision dated April 27, 2020, OWCP denied appellant's occupational disease claim as it was untimely filed. It found that she initially became aware of the relationship between her condition and of its relationship to her federal employment on January 6, 2001 but did not file a claim until March 24, 2020. Additionally, OWCP found that the evidence of record did not support a finding that appellant's immediate supervisor had actual knowledge of the injury within 30 days of the date of injury.

On May 21, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a July 30, 2020 notice, OWCP's hearing representative informed appellant that she had scheduled a telephonic hearing for September 8, 2020 at 12:00 p.m. Eastern Standard Time (EST). The notice included the toll-free telephone number and 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 received.

By decision dated October 1, 2020, 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 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

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. 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 her request for an oral hearing.

Following OWCP's April 27, 2020 decision denying appellant's occupational disease claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a July 30, 2020 notice, OWCP's hearing representative notified her that OWCP had scheduled a telephonic hearing for September 8, 2020 at 12:00 p.m. EST. She properly mailed the hearing notice to appellant's last known address of record and provided instructions for her participation.⁶ The Board has held that, absent evidence to the contrary, a letter properly

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *H.C.*, Docket No. 22-0047 (issued May 25, 2022); *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).

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

⁶ *Id.*

addressed and mailed in the ordinary course of business is presumed to have been received.⁷ This is called the mailbox rule.⁸

As appellant failed to call in to the scheduled hearing and failed to request a postponement or explain her failure to appear in writing within 10 days of the scheduled hearing, the Board finds 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.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁷ *T.D.*, Docket No. 22-0705 (issued October 7, 2022).

⁸ *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).

⁹ *Id.*