

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

V.R., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
MANCHESTER VA MEDICAL CENTER,)
Manchester, NH, Employer)

**Docket No. 24-0238
Issued: April 12, 2024**

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 January 8, 2024 appellant filed a timely appeal from an August 23, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 10, 2023, 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 before a representative of OWCP's Branch of Hearings and Review.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 18, 1994 appellant, then a 48-year-old clinical research coordinator, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 1994 she sustained a left thumb injury when transferring a patient to a chair while in the performance of duty. OWCP accepted the claim for left thumb fracture and cervical brachial neuritis or radiculitis. Appellant underwent OWCP-authorized repair of the tear of the ulnar collateral ligament of the left thumb on October 19, 1994.

By decision dated February 10, 2023, OWCP denied authorization for prescription medication, effective March 9, 2023, as the evidence of record did not support that it was medically necessary to address the effects of appellant's work-related injury.

On February 16, 2023 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 16, 2023 notice, OWCP's hearing representative informed appellant that an oral hearing was scheduled for August 8, 2023 at 9:00 a.m. Eastern Standard Time (EST). The hearing representative provided appellant with a toll-free telephone number and appropriate passcode for access to the hearing. OWCP's hearing representative mailed the notice to appellant's last known address of record. Appellant, however, failed to appear for the hearing.

By decision dated August 23, 2023, OWCP's Branch of Hearings and Review 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.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 notice of the scheduled hearing to a claimant and any representative of record.⁴

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *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).

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 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.⁶ 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.⁷

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 February 10, 2023 decision denying appellant's authorization for prescription medication, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 16, 2023 notice, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for August 8, 2023 at 9:00 a.m. EST and mailed the notice to appellant's last known address of record.⁸

Appellant, however, failed to appear for the scheduled hearing at the prescribed time. Furthermore, 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 such, the Board finds that OWCP properly determined that appellant 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 before a representative of OWCP's Branch of Hearings and Review.

⁵ 20 C.F.R. § 10.622(f).

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (February 2022); *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

⁸ 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. *L.L.*, *supra* note 4; *V.C.*, *supra* note 4; *L.T.*, *supra* note 4.

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2024
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