

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

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**C.H., Appellant** )

**and** )

**U.S. POSTAL SERVICE, SOUTHWEST POST** )  
**OFFICE, Washington, DC, Employer** )  
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**Docket No. 24-0741**  
**Issued: August 21, 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

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 24, 2024 appellant filed a timely appeal from a January 10, 2024 merit decision and an April 24, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly found that appellant was not entitled to a cost-of-living adjustment COLA increase until March 1, 2023; and (2) 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 February 20, 2007 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his back and right knee when he slipped and fell on ice in the employing establishment parking lot while in the performance of duty. He

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

stopped work on February 21, 2007. OWCP accepted the claim for right knee contusion, lumbar strain, and aggravation of lumbar disc degeneration. It paid appellant on the supplemental rolls from April 9 to October 27, 2007, again on the supplemental rolls commencing December 6, 2021, and on the periodic rolls commencing December 3, 2023.

On January 2, 2024 OWCP received letters from appellant asserting that his pay rate was incorrect because OWCP did not include proper COLA increases. Appellant stated that he had not received a COLA increase for the years 2022 and 2023. He also alleged that he had not received a COLA increase since his compensation began on December 6, 2021, the last day he worked.

The record contains an internal memorandum dated January 9, 2024. OWCP utilized appellant's weekly recurrence pay rate on December 6, 2021 of \$1,346.46. It determined that the COLA consumer price index (CPI) increase was not applicable until March 1, 2023. OWCP reported a standard calculation for the effective date of December 6, 2021 with no change for January 2, 2022, March 1, 2022, and January 1, 2023. Effective March 1, 2023, it included a CPI amount of \$56.55 applied to his pay rate.

By decision dated January 10, 2024, OWCP explained that it utilized a weekly pay rate of \$1,346.46, which was based on appellant's annual recurrence pay rate, commencing December 6, 2021, of \$70,016.00. It multiplied by his basic pay rate of 66 2/3 percent to reach a weekly compensation rate of \$897.64. OWCP noted that COLA increases began every March 1<sup>st</sup> with the adjustment increases beginning more than a full year after December 6, 2021, the date that appellant's recurrence pay rate began. It informed him that he was not entitled to a COLA on March 1, 2022 as a full year had not passed since December 6, 2021. Thus, in accordance with its procedures, OWCP applied a COLA to appellant's weekly compensation rate effective March 1, 2023.<sup>2</sup> It increased appellant's pay rate from \$897.64 to \$954.24, noting he would be entitled to the next COLA increase on March 1, 2024.

On January 18, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 12, 2024 notice, OWCP's hearing representative informed appellant that a telephonic hearing was scheduled for April 11, 2024 at 9:00 a.m., Eastern Standard Time (EST). The notice provided a toll-free number and the required passcode to participate in the telephone hearing. The hearing representative mailed the notice to appellant's last known address of record.

Appellant did not appear for the scheduled hearing and there is no indication that he requested postponement.

By decision dated April 24, 2024, OWCP found that appellant had abandoned his request for an oral hearing. It determined that he had failed to appear at the telephonic hearing scheduled for April 11, 2024, and had failed to contact OWCP either before or after the scheduled hearing to request a postponement or explain his failure to appear.

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.16 (February 2013).

## LEGAL PRECEDENT -- ISSUE 1

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of monthly rate.<sup>3</sup> Section 8101(4) of FECA defines “monthly pay” for purposes of computing compensation benefits as follows: “[T]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater....”<sup>4</sup>

Section 8146a(a) of FECA provides that compensation payable on account of disability or death which occurred more than one year before the effective date of a COLA increase (determined in accordance with the provisions of the section) shall be increased by the percent of the increase.<sup>5</sup> Legislative history shows that this phrase means compensation payable for an employment-related condition where the entitlement to such compensation occurred more than one year before the effective date of the increase.<sup>6</sup>

In cases of disability, a beneficiary is eligible for COLAs under section 8146a(a) where injury-related disability began more than one year prior to the date the COLA took effect. The employee’s use of continuation of pay, as provided by section 8118, or of sick or annual leave during any part of the period of disability does not affect the computation of the one-year period.<sup>7</sup> The disability need not have been continuous for the whole year before the increase.<sup>8</sup>

OWCP Procedures further provide that:

“Entitlement. Under 5 U.S.C. § 8146a(a), CPI increases are granted where the disability (*i.e.*, compensable disability or the date when an injured employee stopped work on account of the injury) occurred more than one year, *i.e.* at least a year and a day, before the effective date of the CPI increase. *See* 20 C.F.R. § 10.420.

(1) The disability need not have been continuous for the whole year before the increase. The use of a higher (recurrent) pay rate precludes addition of a CPI increase within one year following the application of such a pay rate.”<sup>9</sup>

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<sup>3</sup> *See* 5 U.S.C. §§ 8105-8107.

<sup>4</sup> *Id.* at § 8101.4.

<sup>5</sup> 5 U.S.C. § 8146a(a).

<sup>6</sup> *See F.S.*, Docket No. 23-1014 (issued April 10, 2024); *S.K.*, Docket No. 20-0422 (issued December 2, 2020); *Franklin L. Armfield*, 29 ECAB 500 (1978) (claimant not eligible for a cost-of-living increase, as provided by section 8146a(a), unless the date of his entitlement to compensation occurred more than a year before the effective date of the cost-of-living increase).

<sup>7</sup> 20 C.F.R. § 10.420(a).

<sup>8</sup> *Id.*

<sup>9</sup> *Supra* note 2.

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined appellant's pay rate for compensation purposes.

Appellant asserts that OWCP erred in calculating his pay rate for compensation purposes because it did not include COLA increases for over two years following his December 6, 2021 recurrence of disability.

As previously noted, FECA provides that more than one year must pass before the effective date of a COLA increase before compensation payable on account of disability is entitled to the increase.<sup>10</sup> OWCP procedures further explain that the disability need not be continuous and a higher (recurrent) pay rate precludes addition of a COLA increase within one year following the application of such a pay rate.<sup>11</sup> As appellant's recurrent pay rate was determined as of December 6, 2021, he was not entitled to a COLA increase until the next increase, which was effective March 1, 2023.<sup>12</sup>

The appropriate effective date for a COLA increase is set by 5 U.S.C. § 8146a(a) and OWCP has no authority to change the effective date, which in this case was March 1, 2023. There is no evidence to show that OWCP improperly calculated when his COLA increase was applicable under 5 U.S.C. § 8146a(a).<sup>13</sup>

The Board finds that OWCP properly found that appellant was not entitled to a COLA increase until March 1, 2023. Thus, OWCP properly calculated his pay rate for compensation purposes.

### LEGAL PRECEDENT -- ISSUE 2

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.<sup>14</sup> 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.<sup>15</sup> OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>16</sup>

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<sup>10</sup> *Supra* note 5.

<sup>11</sup> *Supra* note 9.

<sup>12</sup> *Supra* note 2.

<sup>13</sup> 5 U.S.C. § 8146a(a). *See also* *Carl R. Benavidez*, 56 ECAB 596; *F.S.*, *supra* note 6; *S.K.*, *supra* note 6; *Franklin L. Armfield*; *supra* note 6.

<sup>14</sup> 20 C.F.R. § 10.616(a).

<sup>15</sup> *Id.* at § 10.617(b).

<sup>16</sup> *C.B.*, Docket No. 24-0301 (issued May 6, 2024); *K.A.*, Docket No. 22-1168 (issued December 8, 2022); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *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. 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.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

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 January 10, 2024 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a March 12, 2024 letter, OWCP's hearing representative notified him that a telephonic hearing was scheduled for April 11, 2024 at 9:00 a.m., EST. She properly mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate.<sup>18</sup>

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 presumption is commonly referred to as the mailbox rule.<sup>19</sup> Appellant did not request a postponement and failed to appear for the scheduled hearing or otherwise provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining his failure to appear. The Board, therefore, finds that he abandoned his request for an oral hearing.

### **CONCLUSION**

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

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<sup>17</sup> 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); *K.A., id.*; *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

<sup>18</sup> *E.H.*, Docket No. 23-1011 (issued January 24, 2024); *J.F.*, Docket No. 23-0348 (issued July 24, 2023); *J.W.*, Docket No. 22-1094 (issued January 23, 2023).

<sup>19</sup> *G.C.*, Docket No. 23-0135 (issued July 27, 2023); *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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 10 and April 24, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 21, 2024  
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