

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

T.B., Appellant)	
)	
and)	Docket No. 25-0029
)	Issued: November 5, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Brooklyn, NY,)	
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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 14, 2024 appellant filed a timely appeal from a July 23, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated March 26, 2024 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 over 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 December 22, 2023 appellant, then a 41-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she felt a sharp pain on the left side of her back when lifting a tray of mail while in the performance of duty. She stopped work on December 22, 2023.

OWCP subsequently received medical evidence in support of appellant's claim.

By development letter dated January 18, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 60 days to respond.

OWCP subsequently received medical reports, wherein Dr. Kevin Frison, a pain medicine physiatrist, noted diagnoses of lumbar spine derangement and lumbar myofascial pain syndrome.

In a follow-up letter dated February 23, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the January 18, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a report dated February 22, 2024, Dr. Daniel Giangrasso, Board-certified in physical medicine and rehabilitation, diagnosed lumbar spine derangement, and lumbar myofascial pain syndrome. He concluded that appellant's diagnoses were causally related to her December 22, 2023 employment injury.

By decision dated March 26, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted December 22, 2023 employment incident. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On April 25, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 12, 2024 notice, OWCP's hearing representative informed appellant that her oral hearing would be conducted by telephone, and was scheduled for July 12, 2024 at 8:30 a.m. Eastern Standard Time (EST). The hearing representative provided the toll-free number and passcode for access to the hearing. The notice was mailed to appellant's last known address of record. Appellant did not appear for the telephonic hearing and no request for postponement was made.

By decision dated July 23, 2024, 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 subsequent to, 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

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.⁶

ANALYSIS

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

Following OWCP's March 26, 2024 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 June 12, 2024 notice, OWCP's hearing representative informed appellant that her oral hearing would be conducted by telephone, and was scheduled for July 12, 2023 at 8:30 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.⁷

Appellant failed to appear for the scheduled hearing at the prescribed time. She also did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *C.M.*, Docket No. 24-0895 (issued September 30, 2024); *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).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also C.M., 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 C.M., L.L., V.C., and L.T., supra* note 4.

within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned her request for an oral hearing.⁸

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2024
Washington, DC

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

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

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

⁸ *Id.*