

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

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C.M., Appellant)	
)	
and)	Docket No. 24-0895
)	Issued: September 30, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Denver, CO, Employer)	
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Appearances: *Case Submitted on the Record*
Frank Cavanaugh, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 5, 2024 appellant, through counsel, filed a timely appeal from a June 17, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days elapsed from the last merit decision on this issue, dated February 12, 2024, to the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant asserted that the standard of evidence required to establish expansion of his claim to include additional conditions was impossible. The Board, in exercising its discretion, denies appellant's request for oral argument because the Board lacks jurisdiction to review the merits of this case. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (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 his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On October 16, 2022 appellant, then a 49-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 19, 2022 he contracted COVID-19, resulting in fractured neck vertebrae, nerve damage, a head injury, and lung damage, while in the performance of duty. OWCP accepted the claim for COVID-19 on November 7, 2022.

In a memorandum dated October 18, 2022, Christian Birky, a certified physician assistant, attributed a cervical neck injury at C7 and a laceration of the head to the symptoms of shortness of breath, lightheadedness, and dizziness resulting from appellant's COVID-19 infection. Mr. Birky noted that appellant developed a COVID-19 infection while at work on September 16, 2022 and due to the symptoms he sustained a fall at his home on September 19, 2022.

By decision dated August 17, 2023, OWCP denied expansion of the acceptance of appellant's claim to include cervical neck fracture.

On September 18, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated October 31, 2023, OWCP's hearing representative set aside the August 17, 2023 decision, and remanded the case for further development as to whether appellant sustained a consequential injury causally related to his accepted COVID-19 condition.

By decision dated February 8, 2024, OWCP denied expansion of the acceptance of appellant's claim to include cervical neck fracture.

By decision dated February 12, 2024, OWCP denied appellant's claim for disability from work commencing September 19, 2022 causally related to the accepted employment injury.

On March 6, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the February 8, 2024 decision.

In a May 3, 2024 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, and was scheduled for June 3, 2024 at 12:30 p.m. Eastern Standard Time (EST). The hearing representative provided the toll-free number and passcode for access to the hearing and mailed the notice to appellant's last known address of

³ 5 U.S.C. § 8101 *et seq.*

record, as well as to the employing establishment and counsel. Neither appellant nor counsel appeared for the telephonic hearing and no request for postponement was made.

By decision dated June 17, 2024, OWCP found that appellant had abandoned his request for an oral hearing as he 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 he had contacted the Branch of Hearings and Review either prior to, or subsequent to, the scheduled hearing to explain his 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.⁴ 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.⁵ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.⁶

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.⁷ 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.⁸

ANALYSIS

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 February 8, 2024 decision denying expansion of the acceptance of appellant's claim to include cervical neck fracture, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a May 3, 2024 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, and was scheduled for June 3, 2024 at 12:30 p.m. EST. The hearing representative

⁴ 20 C.F.R. § 10.616(a).

⁵ *Id.* at § 10.617(b).

⁶ *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).

⁷ 20 C.F.R. § 10.622(f).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); see also *L.L.* and *V.C.*, *supra* note 6; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

mailed the notice to appellant's last known address of record, and to counsel, providing instructions on how to participate. 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

Neither appellant nor counsel appeared for the scheduled hearing. Neither requested a postponement or provided 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 failure to appear, the Board finds that OWCP properly determined that he abandoned his request for an oral hearing.¹⁰

CONCLUSION

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.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 30, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁹ See *L.L., V.C., and L.T., supra* note 6.

¹⁰ *Id.*