

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **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.

## **FACTUAL HISTORY**

On March 11, 2024 appellant, then a 54-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2024 her right eye vision became blurry during delivery of heavy packages while in the performance of duty. She stopped work on February 14, 2024 and returned to work on February 21, 2024.

OWCP received work restriction notes dated February 13 and February 16, 2024 bearing an illegible signature.

In a March 29, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the types of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In a follow-up letter dated April 22, 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 from the March 29, 2024 letter to submit the necessary 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 response, OWCP received a series of medical bills. It also received a letter from Dr. Omar Ahmad, a Board-certified ophthalmologist, dated March 18, 2024, which related that appellant had undergone retinal surgery on March 13, 2024, and could return to work on March 13, 2024.

By decision dated June 5, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment incident occurred as alleged. OWCP noted that it had not received a clear statement from appellant describing exactly how the injury was alleged to have occurred. It further noted that it had not received any medical evidence containing a medical diagnosis in connection with the alleged February 13, 2024 traumatic incident.

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

In an August 16, 2024 notice, OWCP's hearing representative informed appellant that her oral hearing would be conducted by telephone, and was scheduled for September 24, 2024 at 12:45 p.m. Eastern Standard Time (EST). The hearing representative provided the toll-free number and passcode for access to the hearing and instructed appellant to call the toll-free number provided and enter the passcode when prompted. The hearing representative mailed the notice to appellant's last known address of record, as well as to the employing establishment. Appellant did not appear for the telephonic hearing, and no request for postponement was made.

By decision dated October 4, 2024, OWCP found that appellant had abandoned her request for an oral hearing as she had received timely written notification of the hearing, 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.<sup>3</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>4</sup> OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.<sup>5</sup>

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.<sup>6</sup> 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>7</sup>

### **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 June 5, 2024 decision denying appellant's traumatic injury claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an August 16, 2024 notice, OWCP's hearing representative informed appellant that her oral hearing would be conducted by telephone, and was scheduled for September 24, 2024 at 12:45 EST. The hearing representative mailed the notice to appellant's last known address of record, providing instructions on how to participate. The Board has held that, absent evidence to

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<sup>3</sup> 20 C.F.R. § 10.616(a).

<sup>4</sup> *Id.* at § 10.617(b).

<sup>5</sup> *A.P.*, Docket No. 22-0709 (issued November 25, 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); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>6</sup> 20 C.F.R. § 10.622(f).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also A.P.* and *L.L.* *supra* note 5; *C.M.*, Docket No. 24-0895 (issued September 30, 2024); *K.H.*, Docket No. 20-1198 (issued February 8, 2021).

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.<sup>8</sup>

Appellant failed to appear for the scheduled hearing. 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 appellant failed to attend the scheduled hearing by telephone, and did not provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.<sup>9</sup>

### **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.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 4, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2025  
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

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<sup>8</sup> See *supra* note 6.

<sup>9</sup> *Id.*