

ISSUE

The issue is whether OWCP properly determined that appellant abandoned his request for a hearing.

On appeal appellant contends that the notice of hearing was mailed to him at his prior address which changed in January 2010 and he did not receive the hearing notice.

FACTUAL HISTORY

On August 6, 2009 appellant, then a 53-year-old aircraft electrician, filed an occupational disease claim (Form CA-2) alleging that he sustained stress and related injuries, light-headedness, ear-ringing and seeing stars, due to verbal abuse and harassment by his supervisor on July 31, 2009.

Appellant submitted medical reports from several physicians regarding his stress condition. In an August 3, 2009 medical report, Dr. Edward T. King, Board-certified in occupational medicine, diagnosed chest pain.

By letter dated October 30, 2009, OWCP informed appellant that the evidence was insufficient and advised him about the evidence needed to establish his claim. It allotted 30 days for appellant to respond.

In an October 20, 2009 medical report, Dr. Jeffrey A. Crook, a Board-certified cardiologist and internal medicine physician, diagnosed hypertension.

OWCP, by decision dated January 27, 2010, denied appellant's claim on the grounds that he did not submit sufficient factual and medical evidence to establish fact of injury in the performance of duty.

Appellant requested an oral hearing which was scheduled as a telephonic hearing for 9:30 a.m. eastern time on June 8, 2010. OWCP provided appellant with the telephone number and the pass code for accessing the hearing. It advised appellant that postponement of the hearing would only be permitted upon receipt of documentation showing his nonelective hospitalization or that the death of a spouse, parent or child prevented his attendance. The notice was mailed to appellant's address of record.

On June 8, 2010 appellant failed to call the toll-free number to participate in the telephonic hearing.

By decision dated June 28, 2010, OWCP's hearing representative found that appellant failed to appear at the hearing and had abandoned his request. There was no evidence that he contacted OWCP prior or subsequent to the scheduled hearing.

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 upon 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 claims examiner, 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 mailed notice of a scheduled hearing to a claimant.⁶

OWCP's procedure manual provides that a hearing can be considered abandoned only under very limited circumstances.⁷ All three of the following conditions must be present: (1) the claimant has not requested a postponement; (2) the claimant has failed to appear at a scheduled hearing; and (3) the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, OWCP's hearing representative will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.⁸

ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned his request for a hearing.

The record establishes that, on April 27, 2010, in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled telephonic hearing to be held on June 8, 2010 at 9:30 a.m. eastern time. The hearing notice was properly mailed to his last known address of record. The Board has held, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.⁹ The Board finds that as OWCP mailed the notice of hearing to appellant's last known address, there is no evidence to rebut the presumption that he received it and his contention of nonreceipt is not supported by the record.¹⁰ The Board notes that the notice was sent more than 30 days prior to the scheduled hearing date of June 8, 2010. The record establishes that appellant did not call at the appointed time. Further, he did not request a postponement of the hearing prior to June 8, 2010 or explain his failure to appear at the hearing within 10 days of the scheduled hearing. Therefore, as all three conditions have been satisfied pursuant to OWCP's procedures, the Board finds that appellant abandoned his request for a hearing.

⁴ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁵ 20 C.F.R. § 10.617(b).

⁶ See *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

⁷ See *V.C.*, Docket No. 10-1889 (issued March 11, 2011); *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

⁹ See e.g., *Kenneth E. Harris*, 54 ECAB 502 (2003).

¹⁰ *Id.*

On appeal appellant contends that the notice of hearing was mailed to a prior address that changed in January 2010. In *Jack Sucic*,¹¹ the Board found that it was the claimant's responsibility to inform OWCP of a change of address. The notice in question was sent to the employee's address of record and not returned to OWCP. The presumption arose that the notice was forwarded to his new address and was received. The record establishes that OWCP advised appellant of the June 8, 2010 hearing by notice of hearing dated April 27, 2010 which was sent to his last known address of record¹² and that the notice of hearing was not returned to OWCP. The presumption is that the notice was received.¹³ Thus, OWCP's June 28, 2010 decision was proper.¹⁴

CONCLUSION

The Board finds OWCP properly determined that appellant abandoned his request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹¹ 39 ECAB 1338 (1988).

¹² 20 C.F.R. § 10.127. "A copy of the decision shall be mailed to the employee's last known address."

¹³ See *Kenneth E. Harris*, *supra* note 9.

¹⁴ *Gary L. Danbeck*, Docket No. 98-1323 (issued January 27, 2000).