

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

N.Y., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Upland, CA, Employer

)
)
)
)
)
)
)
)

**Docket No. 14-609
Issued: June 6, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2014 appellant filed a timely appeal from the January 10, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether appellant abandoned his hearing request.

FACTUAL HISTORY

On April 3, 2013 appellant, a 59-year-old customer service supervisor, filed an occupational disease claim alleging that he injured his back, hips and knees as a result of constantly walking the work floor.

¹ 5 U.S.C. § 8101 *et seq.*

In a decision dated July 3, 2013, OWCP denied appellant's claim, noting that he had failed to establish fact of injury.

In a letter postmarked July 15, 2013, appellant requested an oral hearing before an OWCP hearing representative. He indicated that he preferred a telephone hearing.

On November 5, 2013 OWCP notified appellant that a hearing would be held on December 11, 2013. It provided the scheduled time, telephone number, pass code and directions.²

In a decision dated January 10, 2014, OWCP found that appellant abandoned his hearing request. Appellant failed to appear, and there was no evidence that he contacted OWCP either before or after the scheduled hearing to explain his failure to appear.

On appeal, appellant contends that he had rotator cuff surgery on November 4, 2013 and the medications he was taking made him unavailable for the interview. He indicated a willingness for the hearing to be rescheduled and stated that he would like to be afforded the opportunity to be rescheduled later in the day. Appellant also indicated that he was enclosing a copy of medical reports.³

LEGAL PRECEDENT

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.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 It has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.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. The failure of the claimant to request another hearing within 10 days, or the failure of the

² Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. *See James A. Gray*, 54 ECAB 277 (2002). The November 5, 2013 letter was sent to appellant's address of record.

³ The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

⁴ 20 C.F.R. § 10.616(a).

⁵ *Id.* at § 10.617(b).

⁶ *K.D.*, Docket No. 11-77 (issued August 18, 2011); *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁷

ANALYSIS

After OWCP denied his injury claim, appellant filed a timely request for an oral hearing. OWCP properly notified him that a telephone hearing would be held on December 11, 2013 and provided information by which to make contact with the hearing representative.⁸

There is no evidence in the record that appellant requested a postponement of the scheduled hearing or evidence that he wrote to OWCP within 10 days of the scheduled hearing to show good cause for his failure to appear. Accordingly, the Board finds that appellant abandoned his hearing request. The Board will therefore affirm OWCP's January 10, 2014 decision.

On appeal, appellant offered an explanation for his failure to appear and noted his willingness for it to be rescheduled. As OWCP's November 5, 2013 notice of hearing spells out, no further opportunity for a hearing will be provided but this does not leave appellant without an avenue to pursue his claim. Appellant should review the appeal rights attached to the July 3, 2013 OWCP decision.

CONCLUSION

The Board finds that appellant abandoned his hearing request.

⁷ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁸ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. *K.R.*, Docket No. 13-1412 (issued December 11, 2013); *James A. Gray*, 54 ECAB 277 (2002).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board