

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Federal Way, WA, Employer**

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**Docket No. 14-1512
Issued: October 15, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 23, 2014 appellant filed a timely appeal from a May 21, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) finding that she abandoned her request for an oral hearing. 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 the nonmerit decision by OWCP. The last merit decision of record was OWCP's October 3, 2013 decision. Because more than 180 days has elapsed between the last merit decision and the filing of this appeal on June 23, 2014, the Board lacks jurisdiction to review the merits of this case.²

ISSUE

The issue is whether appellant abandoned her request for an oral hearing before an OWCP hearing representative.

¹ 5 U.S.C. § 8101 *et seq.*

² An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On June 15, 2004 appellant, then a 35-year-old mail processor, filed a traumatic injury claim alleging that on that day she sustained a shoulder and neck injury when she was throwing a tray of mail on a ledge. By decision dated September 13, 2004, OWCP accepted the claim for right shoulder acromioclavicular joint separation.

On August 8, 2007 appellant returned to work as a mail processing clerk in a modified capacity. Beginning June 7, 2013, she began working reduced hours.

On August 10, 2013 appellant filed a claim for compensation (Form CA-7) for leave without pay beginning June 24, 2013.

In a September 20, 2013 narrative statement, appellant reported that she sustained a rotator cuff tear, dislocation and sprain of her right shoulder due to her repetitive employment duties which was a continuation of her original injury. She submitted medical reports in support of her claim.

By decision dated October 3, 2013, OWCP denied appellant's recurrence claim on the grounds that the medical evidence failed to establish that her alleged disability and consequential conditions were causally related to the accepted June 15, 2004 traumatic injury.

On October 23, 2013 appellant requested a telephone hearing before the Branch of Hearings and Review.

By letter dated March 20, 2014, OWCP notified appellant that her hearing would be held on May 6, 2013 at 4:00 p.m. Eastern time. It provided her with a toll-free number to call at that time to be connected to the hearing representative and court reporter. Appellant did not participate in the scheduled hearing.

By decision dated May 21, 2014, an OWCP hearing representative found that appellant had abandoned her request for an oral hearing. The hearing representative noted that appellant received written notice 30 days in advance of the hearing but failed to participate. The hearing representative also found no evidence that appellant contacted OWCP either prior to or subsequent to the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides the right to a hearing before an OWCP hearing representative, stating:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.”³

³ 5 U.S.C. § 8124(b)(1).

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing 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 mailed to appellant and her representative a notice of a scheduled hearing.⁶

Under the mailbox rule, it is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁷ However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.⁸ Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.⁹

The authority governing abandonment of hearings rests with OWCP's regulations, which provide in pertinent part as follows: 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 claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁰

ANALYSIS

Following OWCP's October 3, 2013 decision denying her recurrence claim, appellant requested an oral hearing before an OWCP hearing representative. On March 20, 2014 OWCP notified appellant that her telephone hearing was scheduled for May 6, 2014 at 4:00 p.m. Eastern time. It provided her with a toll-free number and pass code to call in at the time of the hearing. Appellant did not request a postponement, failed to call in at the scheduled hearing and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As all three conditions for abandonment are met, the Board finds that she abandoned her request for an oral hearing.¹¹

⁴ 20 C.F.R. § 10.616(a).

⁵ *Id.* at 10.617(b).

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

⁷ See *Michelle Lagana*, 52 ECAB 187 (2000).

⁸ See *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-526 (issued September 14, 2009).

⁹ See *Clara T. Norga*, 46 ECAB 473 (1995); *W.A.*, Docket No. 06-1452 (issued November 27, 2006).

¹⁰ 20 C.F.R. § 10.622(f); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011). See also *M.F.*, Docket No. 14-128 (issued March 18, 2014).

¹¹ *C.H.*, Docket No. 14-620 (issued June 25, 2014).

On appeal, appellant claims that she never received the March 20, 2014 OWCP letter notifying her of the May 6, 2014 hearing. She did not indicate that her address changed or that the address used by OWCP was otherwise incorrect. The address used by OWCP in its March 20, 2014 letter is appellant's last known address and the same address appellant noted in her appeal to the Board. The Board has found that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business, such as in the course of OWCP's daily activities, is presumed to have arrived at the mailing address in due course.¹² This is known as the mailbox rule.¹³ Appellant submitted no evidence substantiating why the presumption would not apply. Therefore, the Board finds that appellant is presumed to have received notice of the scheduled hearing and will affirm the hearing representative's May 21, 2014 decision.

CONCLUSION

The Board finds that appellant abandoned her request for an oral hearing before an OWCP hearing representative on May 6, 2014.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹² *M.Y.*, Docket No. 07-2202 (issued February 12, 2008).

¹³ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004).