



## **FACTUAL HISTORY**

On November 19, 2010 appellant, then a 40-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on October 25, 2010 when she was trying to catch a patient who fell forward from a standing position. OWCP accepted appellant's claim for closed right clavicle fracture, right shoulder and upper arm contusions and sprains, right superior glenoid labrum lesion, and displacement of cervical intervertebral disc without myelopathy.<sup>3</sup>

On June 26, 2014 appellant filed a claim for a schedule award (Form CA-7).

By decision dated March 6, 2015, OWCP granted appellant a schedule award for 12 percent permanent impairment of her right upper extremity. The award ran for 37.44 weeks from November 11, 2014 to July 31, 2015.

In a letter dated March 12, 2015, appellant, through her counsel at the time, requested a telephonic hearing with an OWCP hearing representative regarding the March 6, 2015 schedule award decision.

In an August 19, 2015 letter, OWCP's Branch of Hearings and Review notified appellant that it had scheduled a telephone hearing for October 5, 2015 at 10:00 a.m. Eastern Standard Time. Appellant was provided a toll-free number to use to appear at the scheduled hearing. She was advised regarding the procedures for rescheduling a hearing.<sup>4</sup>

OWCP indicated that there was no evidence in the file that she had contacted OWCP either prior or subsequent to the scheduled hearing to explain her failure to appear at the scheduled hearing.<sup>5</sup>

By decision dated November 13, 2015, OWCP determined that appellant had abandoned her March 2015 request for a hearing with an OWCP hearing representative. It noted that appellant had been properly notified of the telephonic hearing scheduled for October 5, 2015, but that she had failed to appear on that date.

## **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.<sup>6</sup> Unless otherwise directed in writing by the claimant, the hearing

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<sup>3</sup> Appellant received disability compensation on the daily rolls beginning August 15, 2011.

<sup>4</sup> OWCP sent the notice to the addresses of record for appellant, her counsel at that time, and the employing establishment.

<sup>5</sup> In an August 25, 2015 decision, OWCP denied appellant's claim for employment-related disability on June 15 and 16, 2015. In a letter dated August 31, 2015, appellant, through her counsel at the time, requested a telephonic hearing with an OWCP hearing representative regarding the August 25, 2015 disability decision. The matter is not the subject of the present appeal. *See supra* note 2.

<sup>6</sup> 20 C.F.R. § 10.616(a).

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>7</sup> OWCP has the burden of proving that it properly mailed to appellant and her representative a notice of a scheduled hearing.<sup>8</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. 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>9</sup>

### ANALYSIS

Following OWCP's March 6, 2015 decision granting appellant a schedule award for her right upper extremity, she filed a timely request for an oral hearing with an OWCP hearing representative. In an August 19, 2015 letter, OWCP's Branch of Hearings and Review notified her that it had scheduled a telephone hearing for October 5, 2015 at 10:00 a.m. Eastern Standard Time. OWCP properly sent the notice to appellant's address of record. Appellant was provided a toll-free number to use to appear at the scheduled hearing.<sup>10</sup> She failed to appear at the scheduled hearing. She did not request a postponement or provide any explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing. As appellant did not request a postponement, did not appear at the scheduled hearing, and did not provide any notification to the Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that she abandoned her request for a hearing.<sup>11</sup>

On appeal appellant contends that she was not able to appear at the scheduled telephone hearing due to an emergency illness. There is no evidence, however, that she provided this information to OWCP within 10 days of the scheduled hearing.

### CONCLUSION

The Board finds that OWCP properly determined that appellant had abandoned her request for a hearing with an OWCP hearing representative.

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<sup>7</sup> *Id.* at § 10.617(b).

<sup>8</sup> *T.P.*, Docket No. 15-0806 (issued September 11, 2015).

<sup>9</sup> 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

<sup>10</sup> 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. *See James A. Gray*, 54 ECAB 277 (2002). OWCP also sent the notice to the addresses of record for appellant's counsel at that time and the employing establishment.

<sup>11</sup> *See* 20 C.F.R. § 10.622(f); *see also R.S.*, Docket No. 15-1358 (issued December 4, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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