

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

T.B., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
Baltimore, MD, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-0580
Issued: May 19, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 8, 2016 appellant filed a timely appeal from a January 4, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated May 11, 2015 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On March 17, 2015 appellant, then a 46-year-old administrative assistant filed a traumatic injury claim (Form CA-1), alleging that on July 24, 2014 she was waiting to make a salad at

¹ 5 U.S.C. § 8101 *et seq.*

lunch when she stepped out of the way of a coworker and hit her right knee on an open cabinet of the salad bar. She did not stop work. Appellant also claimed continuation of pay. The supervisor checked the box marked “yes” in response to whether her knowledge of the facts about the injury agreed with the statements made by appellant.

By letter dated April 2, 2015, OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days. No additional information was received.

In an April 2, 2015 decision, OWCP denied appellant’s request for continuation of pay as the claim was not reported on an approved OWCP form within 30 days of the injury.

Appellant requested a telephonic hearing before an OWCP hearing representative of the April 2, 2015 decision.

On May 11, 2015 OWCP also denied the claim for compensation, finding that appellant had not established that the events giving rise to the claimed injury occurred as alleged.

On June 5, 2015 OWCP received appellant’s May 15, 2015 request for reconsideration from the May 11, 2015 decision, but submitted no additional evidence. By decision dated June 29, 2015, it denied appellant’s request without conducting a merit review of the claim.

In an October 22, 2015 letter, OWCP responded to appellant’s request for a hearing. It advised her that a telephone hearing would be held on December 9, 2015 at 12 p.m., Eastern Standard Time (EST). OWCP instructed appellant to call the provided toll-free number a few minutes before the hearing time and enter the pass code to gain access to the conference call. It mailed the October 22, 2015 letter to her address of record. Appellant did not appear at the hearing.

By decision dated January 4, 2016, OWCP found that appellant had abandoned her request for a hearing. It determined that she received a written notice of the hearing 30 days before the scheduled hearing but did not appear and did not explain her absence either before or after 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.² Unless otherwise directed in writing by the claims examiner, an OWCP hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30

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

days before the scheduled date.³ OWCP has the burden of proving that it mailed a notice of a scheduled hearing to a claimant.⁴

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁵ With respect to abandonment of hearing requests, Chapter 2.1601.6(g) of OWCP's procedures⁶ and section 10.622(f) of OWCP regulations⁷ provide in relevant part that failure of the claimant to appear at the scheduled hearing, failure to request a postponement, and failure to request in writing within 10 days after the date set for the hearing that another hearing be scheduled shall constitute abandonment of the request for a hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned her request for a hearing and return the case to the district office.⁸

ANALYSIS

Following OWCP's April 2, 2015 decision denying her claim for continuation of pay, appellant timely requested a telephonic hearing before an OWCP hearing representative. On October 22, 2015 OWCP notified appellant that her hearing was scheduled for December 9, 2015 at 12:00 p.m., EST. It provided a toll-free number and a pass code to use 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 to OWCP within 10 days of the scheduled date of the hearing. As she did not appear and did not comply with OWCP's requirements regarding requesting postponement and/or rescheduling within the allotted time, the Board finds that OWCP properly determined that she had abandoned her hearing request.

On appeal, appellant asserts that she did not receive notice of the scheduled hearing as her local post office often delivers her mail to the wrong address. However, in an October 22, 2015 letter, OWCP advised appellant that a telephone hearing would be held on December 9, 2015 and provided her the telephone number and passcode for accessing the hearing. The hearing notice was properly mailed to appellant's 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 Consequently, it is presumed that appellant received the properly addressed notice of hearing.

³ 20 C.F.R. § 10.617(b).

⁴ See also *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁶ 20 C.F.R. § 10.622(f).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁸ See *supra* note 6.

⁹ See *James A. Gray*, 54 ECAB 277 (2002).

CONCLUSION

The Board finds that appellant abandoned her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2016 decision of Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board