

FACTUAL HISTORY

On March 28, 2008 appellant, then a 74-year-old food service worker, filed an occupational disease claim alleging that on January 18, 2008 she became aware of her wrist condition. On January 27, 2008 she realized that her condition was due to pulling carts at work. On May 15, 2008 the Office accepted appellant's claim for bilateral wrist sprain, not otherwise specified, and authorized wage-loss compensation benefits.

By decision dated April 8, 2009, the Office terminated appellant's wage-loss compensation and medical benefits effective that date on the grounds that she no longer had any residuals or disability of her employment-related bilateral wrist sprain.

On April 22, 2009 appellant requested an oral hearing before an Office hearing representative. On July 16, 2009 the Office's Branch of Hearings and Review notified appellant in writing that a hearing was scheduled for August 27, 2009 at 9:00 a.m. Mountain Time. The notice was mailed to her address of record.

By decision dated September 23, 2009, the Branch of Hearings and Review found that appellant abandoned her requested hearing. The decision noted that the hearing was scheduled for August 27, 2009, but she failed to appear as instructed. The decision also found that there was no indication that appellant contacted the Office either prior or subsequent to the scheduled hearing to explain her failure to participate. Based on these factors, the Office concluded that appellant abandoned her oral hearing request.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act and its implementing regulations, a claimant who has received a final adverse decision by the Office 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.¹ Unless otherwise directed in writing by the claims examiner, the Office 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.² The Office has the burden of proving that it mailed notice of a scheduled hearing to a claimant.³

The authority governing the abandonment of hearings rests with the Office's procedure manual, which provides that a hearing can be abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal

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

² 20 C.F.R. § 10.617(b).

³ See *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

decision finding that the claimant has abandoned her request for a hearing and return the case to the district Office.⁴

ANALYSIS

By decision dated April 8, 2009, the Office terminated appellant's wage-loss compensation and medical benefits effective that date finding that she no longer had any residuals or disability of her employment-related bilateral wrist sprains. Appellant timely requested an oral hearing before an Office hearing representative. In a July 16, 2009 letter, the Branch of Hearings and Review notified her that an oral hearing was scheduled for August 27, 2009 at 9:00 a.m. The Office mailed the letter to her address of record. The record establishes that appellant did not appear for the scheduled hearing. Further, she did not request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of August 27, 2009. Therefore, the Board finds that she abandoned her request for a hearing.⁵

On appeal, appellant contends that she did not receive notice of the scheduled hearing. The record reflects that the July 16, 2009 hearing notice was mailed to appellant's address of record and was not returned as undeliverable. 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 the Office's daily activities, is presumed received at the mailing address in due course. This is known as the mailbox rule.⁶ As the Office properly mailed a hearing notice to appellant's address of record, it is presumed that she received the notice of hearing.

CONCLUSION

The Board finds that the Office properly found that appellant abandoned her request for an oral hearing.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999). *See also G.J.*, 58 ECAB 651 (2007).

⁵ *See id.*

⁶ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004); *James A. Gray*, 54 ECAB 277 (2002).

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2009 decision of the Office of Workers Compensation Programs is affirmed.

Issued: October 6, 2010
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