

ISSUE

Whether appellant abandoned his request for an oral hearing before an OWCP hearing representative.

FACTUAL HISTORY

On September 2, 2010 appellant, then a 50-year-old training specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained stress caused by a hostile work environment and continued reprisal.

By letter dated September 30, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked that he respond to the provided questions within 30 days.

In support of his claim, appellant submitted medical records dated April 20 to November 9, 2010, narrative statements describing incidents of harassment and discrimination in the workplace and documents pertaining to his discrimination complaint with the employing establishment.

By decision dated March 17, 2011, OWCP denied appellant's claim finding that the evidence did not establish that the incidents occurred as alleged.

On April 13, 2011 appellant requested an oral hearing by telephone before an OWCP hearing representative. He completed the request form noting his address of record on Biddle Court.

By letter dated July 6, 2011, OWCP notified appellant that a telephonic hearing before an OWCP hearing representative was scheduled for August 11, 2011 at 3:30 p.m. eastern time. Appellant was provided a toll-free number to call and a pass code to connect to the hearing representative and court reporter. The notice was sent to his address of record on Biddle Court.

By decision dated September 2, 2011, OWCP's hearing representative found that appellant had abandoned his request for an oral hearing. He 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 his failure to appear.

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.³ Unless otherwise directed in writing by the claim, 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

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

the scheduled date.⁴ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁵

The authority governing the abandonment of hearings rests with OWCP'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 decision finding that the claimant has abandoned his request for a hearing and return the case to the district OWCP.⁶

ANALYSIS

By decision dated March 17, 2011, OWCP denied appellant's traumatic injury claim. Appellant timely requested an oral hearing before an OWCP hearing representative. By letter dated July 6, 2011, OWCP notified him that a telephonic oral hearing was scheduled for August 11, 2011 at 3:30 p.m. eastern time. Appellant was provided a toll-free number to call and a pass code to connect to the hearing representative and court reporter. The notice was sent to his address of record.⁷ The record shows that appellant did not appear for the scheduled hearing. Further, appellant did not request a postponement of the hearing or explain his failure to appear at the hearing within 10 days of the scheduled hearing date of August 11, 2011. As all three conditions for abandonment are met, the Board finds that he abandoned his request for an oral hearing.⁸

On appeal, appellant contends that he did not receive notice of the scheduled hearing. The record reflects that a copy of the July 6, 2011 hearing notice was mailed to appellant's last known 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 OWCP's daily activities, is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.⁹ As OWCP properly mailed a hearing notice to appellant's address of record, it is presumed to have arrived at his mailing address.

⁴ *Id.* at § 10.617(b).

⁵ See *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁶ 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).

⁷ In the absence of evidence to the contrary, it is presumed that a notice mailed to an individual in the ordinary course of business was received. See *Joseph R. Giallanza*, 55 ECAB 186 (2003).

⁸ See *id.*; see also *L.R.*, Docket No. 11-1405 (issued November 16, 2011).

⁹ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004); *James A. Gray*, 54 ECAB 277 (2002).

CONCLUSION

The Board finds that appellant abandoned his request for an oral hearing before an OWCP hearing representative on August 11, 2011.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board