

FACTUAL HISTORY

On October 12, 2010 appellant, then a 47-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 7, 2010 she sustained a left ankle and lower back injury when she twisted her left leg while walking. She stopped work. The employing establishment controverted the claim.

By letter dated October 21, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and asked that she respond to the provided questions within 30 days.

In support of her claim, appellant submitted medical records dated July 12 to November 15, 2010.

By decision dated November 24, 2010, OWCP denied appellant's claim finding that the evidence failed to establish that the diagnosed condition was causally related to the October 7, 2010 employment incident.

On November 30, 2010 appellant requested an oral hearing before an OWCP hearing representative.

On December 8, 2010 appellant submitted a representative authorization form for Bill Thornton.

By letter dated February 10, 2011, properly addressed to appellant, OWCP notified appellant that her hearing would be held on March 31, 2011 at 10:30 a.m. Eastern time in San Francisco, California. It provided her with an address where the hearing would take place. OWCP also properly copied this notice to appellant's representative, at his address of record.

In a February 16, 2011 letter, appellant advised that her representative would be present at the hearing.

By decision dated April 28, 2011, OWCP's 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 that appellant failed to provide any reason for her failure to appear.

LEGAL PRECEDENT

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

“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 his claim before a representative of the Secretary.”³

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

Chapter 2.1601.6.e (1) of OWCP’s procedure manual explains when an employee is considered to have abandoned his hearing request:

“A hearing can be considered 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, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district OWCP].”⁶

ANALYSIS

Following OWCP’s November 24, 2010 decision denying her claim for compensation, appellant requested an oral hearing before an OWCP hearing representative. On February 10, 2011 it notified appellant and her representative, at their addresses of record, that the hearing was scheduled for March 31, 2011 at 10:30 a.m. Eastern time in San Francisco, California. It provided her with an address where the hearing would take place. Pursuant to the mailbox rule it is presumed that appellant and her representative received notice of the hearing.⁷ Appellant did not request a postponement, failed to report to the scheduled hearing and failed to provide any

³ 5 U.S.C. § 8124(b)(1).

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

⁵ *Michelle Lagana*, 52 ECAB 187 (2000).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (1) (January 1999).

⁷ *Supra* note 5.

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 appellant abandoned her request for an oral hearing. The Board will therefore affirm the hearing representative's April 28, 2011 decision.

CONCLUSION

The Board finds that appellant abandoned her request for an oral hearing before an OWCP hearing representative on March 31, 2011.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board