

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

G.H., Appellant

and

**DEPARTMENT OF THE NAVY, BARROW
HALL, Parris Island, SC, Employer**

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**Docket No. 12-152
Issued: May 16, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 31, 2011 appellant filed a timely appeal from a September 29, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) finding that she abandoned her hearing request. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The last merit decision in this case was the April 19, 2011 OWCP decision which denied appellant's claim for compensation for the periods February 15 to March 21, 2008 and July 2008 through December 2010. For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. See 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

This claim has previously been before the Board. On May 5, 2009 the Board issued a decision remanding the case to OWCP for consolidation. In a November 18, 2010 decision, the Board affirmed the termination of appellant's compensation benefits effective October 15, 2009.³ The Board found that the weight of the medical evidence rested with the August 31, 2009 second-opinion examination report of Dr. Stephen Allen, a Board-certified orthopedic surgeon, who found that appellant's June 2007 back and knee sprain had resolved and that her current residuals were due to underlying arthritic and degenerative changes. The facts of the case as set out in the Board's prior decisions are incorporated herein by reference.

On February 8, 2011 appellant filed a compensation claim for leave without pay for the period September 2007 to July 2008 and for wage loss from July 2008 to December 2010. In a letter dated February 22, 2011, OWCP advised appellant that the dates for compensation which she requested contained two periods which had previously been denied as not compensable and that she could not submit another CA-7 which encompassed those dates. It would adjudicate her claim for compensation for the following dates: September 1 to 15, 2007; November 25, 2007 to February 14, 2008; and March 22 to July 1, 2008.

In decisions dated March 24 and April 19, 2011, OWCP denied appellant's claim for compensation for the claimed periods.

On May 9, 2011 appellant requested a telephonic hearing before an OWCP hearing representative.

By letter dated July 27, 2011, OWCP notified appellant that her hearing would be held on September 14, 2011 at 1:15 p.m. eastern time. Appellant was given a toll-free number 800-857-3197 and a pass code 40993. The notice was mailed to the address of record. Appellant did not contact OWCP on the date of the hearing or thereafter.

By decision dated September 29, 2011, OWCP found that appellant abandoned her hearing request. It found that the hearing was scheduled for September 14, 2011, but she failed to appear as instructed. The decision also found that there was no indication that appellant contacted OWCP either prior or subsequent to the scheduled hearing to explain her failure to participate. Based on these factors, OWCP concluded that she abandoned her oral hearing request.

LEGAL PRECEDENT

Under FECA and its implementing regulations, a claimant who has received a final adverse OWCP decision is entitled to receive a hearing upon written request within 30 days of the date of the decision for which a hearing is sought.⁴ Unless otherwise directed in writing by the claims examiner, OWCP's hearing representative will mail a notice of the time and place of

³ Docket No. 10-430 (issued November 18, 2010).

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

the hearing to the claimant and any representative at least 30 days before the scheduled date.⁵ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁶

OWCP's procedure manual provides that a hearing can be abandoned only under very limited circumstances where all three of the following conditions are present: (1) the claimant has not requested a postponement; (2) the claimant has failed to appear at a scheduled hearing; and (3) the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, OWCP's hearing representative will issue a formal decision finding that the claimant has abandoned her request for a hearing and return the case to the district OWCP.⁷

ANALYSIS

By decisions dated March 24 and April 19, 2011, OWCP denied appellant's claim for compensation. Appellant timely requested a telephonic hearing. OWCP advised her, by letter dated July 27, 2011, that a hearing was scheduled for September 14, 2011 at 1:15 p.m. eastern time. It instructed appellant to telephone a toll-free number and enter a pass code to connect with the hearing representative. She did not request a postponement of the hearing. Appellant did not telephone at the appointed time and did not contact OWCP to explain her failure to appear at the hearing within 10 days of the scheduled September 14, 2011 hearing date. The Board finds that OWCP properly found that appellant had abandoned her request for a hearing.

On appeal, appellant has requested an oral argument before the Board. Oral argument may be held in the discretion of the Board, on its own determination or on application by appellant or the Director.⁸ The Board finds that as it does not have jurisdiction over the merits of the claim, the issue on appeal can be adequately addressed from the record and oral argument would serve no useful purpose. Oral argument would delay issuance of a decision on this appeal. For these reasons, oral argument is denied.

Appellant also contends on appeal that she did not receive notice of the scheduled hearing. The record reflects that a copy of the July 27, 2011 hearing notice was mailed to appellant's address of record and was not returned as undeliverable. The Board has found that, in 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 the hearing notice to appellant's address of record, it is presumed to have arrived at her mailing

⁵ 20 C.F.R. § 10.617(b).

⁶ *A.B.*, 58 ECAB 546 (2007); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(e) (February 2011). See also *G.J.*, 58 ECAB 651 (2007).

⁸ 20 C.F.R. § 501.5(a).

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

address. The Board will affirm the September 29, 2011 OWCP hearing representative's decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board