

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

B.W., Appellant

and

**U.S. POSTAL SERVICE, WORLDWAY AIR
MAIL CENTER, Los Angeles, CA, Employer**

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**Docket No. 13-335
Issued: April 25, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2012 appellant filed a timely appeal from a September 12, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) finding that she abandoned her request for an oral hearing. Because more than 180 days has elapsed between the last merit decision dated April 4, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the September 12, 2012 nonmerit decision.

ISSUE

The issue is whether appellant abandoned a telephonic hearing, which was scheduled for August 10, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 29, 2000 appellant, then a 48-year-old clerk, filed an occupational disease claim alleging that she first became aware that her cervical radiculitis and bilateral tendinitis was employment related on September 22, 1999. OWCP accepted the claim for bilateral cervical radiculitis, bilateral shoulder impingement and bilateral carpal tunnel syndrome, which was subsequently expanded to include a consequential anxiety disorder. Appellant stopped work on September 22, 1999 and has not returned. By letter dated January 3, 2002, OWCP placed her on the periodic rolls for temporary total disability.

By decision dated April 4, 2012, OWCP adjusted appellant's wage-loss compensation effective April 8, 2012 on the grounds that she failed to undergo vocational rehabilitation as directed. It found the constructed position of receptionist was within her physical restrictions and previous work experience.

On April 26, 2012 appellant requested an oral hearing before an OWCP hearing representative.

In a letter dated June 25, 2012, OWCP's Branch of Hearings and Review informed her that a hearing was scheduled for August 10, 2012 at 2:45 p.m. eastern time. The Branch of Hearings and Review provided appellant with a toll-free number and a pass code. It instructed her to call the toll-free number and when prompted enter the pass code provided.² Appellant did not call in or explain reasons for not doing so.

By decision dated September 12, 2012, OWCP's hearing representative found that the telephonic hearing was scheduled for August 10, 2012 but appellant failed to appear. The hearing representative explained, "There is no indication in the file that you contacted [OWCP] either prior or subsequent to the scheduled hearing to explain your failure to appear. Under these circumstances it is deemed that you have abandoned your request for a 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.³ 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 On June 28, 2012 appellant authorized Roy Dumas, President of the American Postal Workers' Union to act as her representative. In a July 31, 2012 letter, OWCP advised Mr. Dumas that a telephonic hearing was scheduled on appellant's claim and attached the notice regarding the August 10, 2012 hearing.

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

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

A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.⁶

Where it has been determined that a claimant has abandoned his or her request for a hearing, OWCP's Branch of Hearings and Review will issue a formal decision.⁷

ANALYSIS

By decision dated April 26, 2012, OWCP found that appellant was obstructing vocational rehabilitation services and reduced her wage-loss compensation based on the constructed position of receptionist. Appellant timely requested a telephonic hearing. In a June 25, 2012 letter, OWCP notified her that a telephonic hearing was scheduled for August 10, 2012 at 2:45 p.m., eastern time.⁸ It instructed appellant to telephone a toll-free number and enter a pass code to connect with OWCP's hearing representative. Appellant did not telephone at the appointed time. 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 10, 2012. The Board finds that appellant abandoned her request for a hearing.

On appeal appellant contends that she was under the mistaken impression that OWCP's hearing representative would call her. She stated that it was not until she reread the letter two weeks later that she realized her error. As noted above, the June 25, 2012 letter gave the date and time of the hearing and provided information on the toll-free number and pass code for appellant to use. Appellant has not given good cause for her failure to appear. The Board therefore finds that, as the conditions for abandonment as specified in OWCP's regulations were met, OWCP properly found that appellant abandoned her request for an oral hearing before an OWCP hearing representative.⁹

⁴ 20 C.F.R. § 10.617(b).

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

⁶ 20 C.F.R. § 10.622(f).

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

⁸ In the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have been received. See *W.P.*, 59 ECAB 514 (2008).

⁹ *M.K.*, Docket No. 12-1762 (issued March 1, 2013).

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2012 is affirmed.

Issued: April 25, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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