

ISSUE

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

FACTUAL HISTORY

OWCP accepted that appellant, then a 30-year-old letter carrier, sustained a lumbar muscle spasm, right shoulder contusion and right hip contusion in the performance of duty on December 24, 2010. Appellant received appropriate medical and wage-loss compensation benefits.

By decision dated April 30, 2012, OWCP terminated appellant's compensation benefits effective that day.

On May 22, 2012 appellant requested an oral hearing before an OWCP hearing representative.

In a July 30, 2012 letter, OWCP's Branch of Hearings and Review notified appellant that it scheduled an oral hearing for 9:15 a.m. local time on September 12, 2012. It provided her with an address in Boston, Massachusetts for the hearing. OWCP advised appellant that postponement of the hearing would only be permitted upon receipt of documentation showing her nonelective hospitalization or that the death of a spouse, parent or child prevented her attendance. The notice was mailed to her address of record.

On September 12, 2012 appellant failed to participate in the video teleconference hearing.

By decision dated October 11, 2012, an OWCP hearing representative found that appellant failed to appear at the hearing and had abandoned her request. There was no evidence that she contacted OWCP prior to or subsequent to the scheduled 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.⁴ 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 days before the scheduled date.⁵ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁶ Section 10.622(f) of OWCP regulations provide that a claimant who fails to appear at a scheduled hearing may request in writing within 10 days after

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

⁵ 20 C.F.R. § 10.617(b).

⁶ See *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

the date set for the hearing that another hearing be scheduled.⁷ 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. Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.⁸

ANALYSIS

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

The record establishes that on July 30, 2012, in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled hearing to be held on September 12, 2012 at 9:15 a.m. local time in Boston, Massachusetts. The hearing notice was properly mailed to appellant's last known address of record. As the Board has held, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.⁹ The Board finds that the notice was sent more than 30 days prior to the scheduled hearing date of September 12, 2012. The record establishes that appellant did not appear at the appointed time. Further, she did not request a postponement of the hearing prior to September 12, 2012 or explain her failure to appear at the hearing within 10 days of the scheduled hearing. Thus, the Board finds that appellant abandoned her request for a hearing.

On appeal appellant, through her attorney, argues the merits of her claim. As noted above, more than 180 days have lapsed from the issuance of OWCP's last merit decision dated April 30, 2012 to the filing of the current appeal on March 1, 2013; therefore, the Board has no jurisdiction over the merits of this case.¹⁰ Thus, the arguments are not substantiated.

CONCLUSION

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

⁷ 20 C.F.R. § 10.622(f).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁹ See, e.g., *Kenneth E. Harris*, 54 ECAB 502 (2003).

¹⁰ See *supra* notes 2-3.

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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