

FACTUAL HISTORY

On March 5, 2012 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim alleging that on February 13, 2012 she sustained an emotional condition due to the harassment by his customer service manager. Appellant alleged that Ms. White refused to allow her to make the necessary adjustments to the delivery route and instructed her to continue with delivering the mail despite her concern about picking her child up from daycare prior to 6:00 p.m.

In a March 28, 2012 letter, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the type of medical and factual evidence required to support her claim and given 30 days to provide the requested information.

By decision dated May 8, 2012, OWCP found the evidence insufficient to establish an injury in the performance of duty.

On June 21, 2012 OWCP received appellant's undated request for an oral hearing before an OWCP hearing representative.

In a letter dated August 23, 2012 to appellant's correct/proper address of record, OWCP's Branch of Hearings and Review informed her that a hearing was scheduled for October 9, 2012 at 1:45 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.

By decision dated October 23, 2012, OWCP's hearing representative found that appellant failed to appear for the telephonic hearing that was scheduled for October 9, 2012. The hearing representative explained that "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.² 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.³ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁴

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

³ 20 C.F.R. § 10.617(b).

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

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.⁵

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.⁶

ANALYSIS

By decision dated May 8, 2012, OWCP found the evidence insufficient to establish that appellant sustained an emotional condition in the performance of duty. Appellant timely requested a telephonic hearing. In an August 23, 2012 letter, OWCP notified her at her proper address of record that a telephonic hearing was scheduled for October 9, 2012 at 1:45 p.m., Eastern Time.⁷ 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 nor did she request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of October 9, 2012. The Board finds that appellant abandoned her request for a hearing.

On appeal appellant contends that at the time of the hearing she was concerned for her son due to his illness and subsequent hospitalization. She stated that she missed the hearing due to focusing on dealing with her son's health issues during the month of October. However, as the Board is unable to consider new evidence or argument for the first time on appeal, the Board is precluded from reviewing it.⁸ No explanation was given either prior to or subsequent to the scheduled October 9, 2012 telephonic hearing. 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

CONCLUSION

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

⁵ 20 C.F.R. § 10.622(f).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁷ 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).

⁸ *See* 20 C.F.R. § 501.2(c)(1).

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 23, 2012 is affirmed.

Issued: August 20, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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