

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

K.R., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Houston, TX, Employer**

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**Docket No. 13-1412
Issued: December 11, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 28, 2013 appellant filed an appeal of a March 20, 2013 decision of the Office of Workers' Compensation Programs (OWCP) finding that she abandoned her request for a hearing. As more than 180 days elapsed from OWCP's most recent merit decision on October 25, 2012,¹ to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision.

ISSUE

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

¹ An appeal of final adverse OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. *See* 20 C.F.R. § 501.3(e).

² 5 U.S.C. § 8101 *et seq.*

On appeal, appellant asserts that she did not participate in the telephonic hearing as she did not receive the notice of hearing. As a household member wrongfully held her mail due to a domestic dispute.

FACTUAL HISTORY

On September 14, 2012 appellant, then a 35-year-old nurse, filed a claim for traumatic injury (Form CA-1) asserting low back pain with radiculopathy into the left lower extremity after she slipped and fell on a wet floor on June 20, 2012. OWCP advised her by September 21, 2013 letter to submit a statement from her physician supporting that the June 20, 2012 slip and fall caused the claimed injury. In response, appellant submitted medical reports diagnosing L5 radiculopathy due to a “fall at the end of June 2012.”

By decision dated October 25, 2012, OWCP denied the claim on the grounds that causal relationship was not established. It accepted the June 20, 2012 slip and fall incident as factual, but found that the medical evidence did not explain how or why that incident caused the claimed injury.

In a letter dated and postmarked November 8, 2012, appellant requested a telephonic oral hearing. She submitted additional medical and factual evidence.

By notice dated January 23, 2013, OWCP advised appellant that a telephonic hearing had been scheduled on March 1, 2013 at 11:15 a.m. It provided the telephone number of the hearing representative and a passcode. The notice was mailed to appellant at her address of record. The record demonstrates that she did not call in for the hearing March 1, 2013. The record contains no evidence that appellant contacted OWCP within 10 days of March 1, 2013 to explain her failure to attend.

By decision dated March 20, 2013, OWCP found that appellant abandoned her request for hearing. It found that she did not call in for the scheduled March 1, 2013 telephonic conference and did not contact OWCP within 10 days before or after the hearing to explain this failure.

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, OWCP’s 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.⁴

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

⁴ 20 C.F.R. § 10.617(b).

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 October 25, 2012 decision, OWCP denied appellant's claim for a back and leg injury. Appellant timely requested an oral hearing. In a January 23, 2013 notice, OWCP advised her that a telephonic oral hearing was to be held on March 1, 2013 and provided a telephone number and passcode. The notice was sent to appellant's address of record.⁷

There is no evidence of record that appellant contacted OWCP within 10 days of March 1, 2013 to explain her failure to call in for the scheduled hearing. As noted, appellant must provide an explanation for her failure to appear within 10 days of the March 1, 2013 hearing. There is no evidence of record that she explained her failure to appear at the scheduled hearing within 10 days of March 1, 2013.

The evidence establishes that appellant did not request a postponement of the hearing, failed to appear at the hearing by calling in and failed to provide adequate explanation for her failure to appear within 10 days. The Board therefore finds that appellant abandoned her request for a hearing in this case.

On appeal, appellant acknowledged that she failed to participate in the scheduled hearing as she did not call in on March 1, 2013. She asserts that a household member interfered with her mail such that she did not receive the notice until an unspecified date after the hearing. The Board notes that the January 23, 2013 notice of hearing was properly addressed and mailed to appellant at her address of record. A notice properly addressed and duly mailed to an individual in the ordinary course of business is presumed to have been received by that individual.⁸ Interference with a claimant's mail after, OWCP mailed the properly addressed notice is not within OWCP's purview.

⁵ *Id.* at § 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 Absent evidence to the contrary, a letter properly address and mailed in the ordinary course of business is presumed to have been received. See *James A. Gray*, 54 ECAB 277 (2002).

⁸ *J.R.*, Docket No. 13-313 (issued August 15, 2013); *Newton D. Lashmett*, 45 ECAB 181 (1993) (mailbox rule).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2013 is affirmed.

Issued: December 11, 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