

ISSUE

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

FACTUAL HISTORY

By decision dated February 10, 2010, OWCP accepted that appellant, then a 42-year-old student trainee, sustained a lumbar sprain due to factors of her federal employment on July 7, 2009.

On February 28, 2010 appellant filed a claim for disability compensation for the period September 15, 2009 through February 28, 2010. By decision dated June 4, 2010, OWCP denied appellant's claim on the basis that the medical evidence was not sufficient to establish total disability for the period claimed.

In a November 18, 2011 letter, OWCP acknowledged receipt of appellant's request to authorize physical therapy and requested additional information. By decision dated January 30, 2012, OWCP denied what it had characterized as appellant's recurrence claim on the basis that the medical evidence failed to establish disability causally related to the accepted injury.

On February 21, 2012 appellant requested an oral hearing before an OWCP hearing representative arguing that she had not filed a claim for recurrence.

In a May 9, 2012 notice, OWCP's Branch of Hearings and Review scheduled an oral hearing *via* video teleconference for 9:30 a.m. local time on June 29, 2012. It provided appellant with an address in Seattle, Washington for the hearing. OWCP advised appellant that postponement of the hearing would only render limited circumstances. The notice was mailed to appellant's address of record.

On June 29, 2012 appellant failed to participate in the video teleconference hearing.

By decision dated August 7, 2012, an OWCP hearing representative found that, as appellant had failed to appear at the hearing, she 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.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 days before the scheduled date.⁴ OWCP has the burden of proving that it mailed notice of a

³ *Id.* at § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

scheduled hearing to a claimant.⁵ 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 the date set for the hearing that another hearing be scheduled.⁶ 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.⁷ 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 May 9, 2012, in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed a notice of the scheduled video teleconference hearing to be held on June 29, 2012 at 9:30 a.m. local time in Seattle, Washington. 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 been received by addressee 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 June 29, 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 June 29, 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 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 January 30, 2012 to the filing of the current appeal on August 20, 2012; therefore, the Board has no jurisdiction over the merits of the case.¹⁰

⁵ See *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

⁶ 20 C.F.R. § 10.622(f).

⁷ *Id.*

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* note 1.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board