

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

D.T., Appellant

and

**DEPARTMENT OF COMMERCE, U.S.
CENSUS BUREAU, Dallas, TX, Employer**

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**Docket No. 14-1158
Issued: August 19, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 21, 2014 appellant filed a timely appeal from an October 28, 2013 nonmerit decision of an Office of Workers' Compensation Programs' (OWCP) hearing representative. Because more than 180 days elapsed from the last merit decision dated April 22, 2013 to the filing of this appeal on April 21, 2014 pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant abandoned her request for a hearing under 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 8, 2013 appellant, then a 48-year-old, field representative, filed a traumatic injury claim alleging that on February 2, 2013 she sustained injuries to her lower back, hips and left knee and leg when she slipped on snow and black ice. She stopped work.

In a decision dated April 22, 2013, OWCP denied appellant's claim. It found insufficient evidence to establish that she sustained an injury while in the performance of duty as she was not scheduled to work on the day the injury occurred.

In a letter postmarked May 16, 2013 and received on May 23, 2013, appellant requested an oral hearing before an OWCP hearing representative.

On August 7, 2013 OWCP notified appellant that a hearing would be held on September 18, 2013 by video teleconference. It provided the scheduled time and location address of the hearing. The notice was sent to appellant's address of record.

By decision dated October 28, 2013, an OWCP hearing representative found that appellant abandoned her hearing request. Appellant failed to appear and there was no evidence that she contacted OWCP either before or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by OWCP may obtain a hearing by 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 claimant, 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.³ It has the burden of proving that it mailed to appellant and her representative a notice of a scheduled hearing.⁴

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.⁵

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *K.D.*, Docket No. 11-77 (issued August 18, 2011); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

ANALYSIS

After OWCP denied her traumatic injury claim, appellant filed a timely request for an oral hearing. It properly notified her that a hearing would be held by video teleconference on September 18, 2013 and provided information by which to attend the conference. The notice was properly sent to her address of record.⁶

The record does not contain any evidence that appellant requested a postponement of the scheduled hearing or evidence that she wrote to OWCP within 10 days of the scheduled hearing to show good cause for her failure to appear. Accordingly, the Board finds that appellant abandoned her hearing request. The Board will therefore affirm OWCP's October 28, 2013 decision.

On appeal, appellant contends that she was released from the hospital four days before the scheduled hearing conference and was given specific instructions to go home and rest. The Board notes, however, that the August 7, 2013 OWCP letter clearly set forth the time and date of the hearing and provided necessary information to postpone or reschedule the hearing. Because no timely explanation was given to the Branch of Hearings and Review, either prior to or subsequent to the scheduled September 18, 2013 hearing, the Board finds that the conditions for abandonment as specified in OWCP's regulations were met. OWCP, therefore, properly found that appellant abandoned her request for a hearing.

CONCLUSION

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

⁶ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. See *James A. Gray*, 54 ECAB 277 (2002).

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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