

FACTUAL HISTORY

On December 26, 2012 appellant, then a 46-year-old temporary relief carrier (TRC), filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2012 he sustained right foot, left shoulder and left arm injuries when he twisted his foot while exiting his truck.

By letter dated January 4, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked to respond to the provided questions within 30 days.

In support of his claim, appellant submitted medical records dated January 8 and 22, 2013 and a November 24, 2012 narrative statement.

By decision dated February 7, 2013, OWCP denied appellant's claim finding that the evidence failed to establish that the diagnosed condition was causally related to the accepted November 24, 2012 employment incident.

On March 8, 2013 appellant requested an oral hearing before an OWCP hearing representative.

By letter dated June 13, 2013, OWCP notified appellant that a hearing would be held on July 15, 2013 at 9:30 a.m. Eastern time. It provided him with a toll free number to call at that time to be connected to the hearing representative.

By decision dated July 30, 2013, an OWCP hearing representative found that appellant abandoned his request for an oral hearing. The hearing representative determined that appellant received written notice 30 days in advance of the hearing but failed to participate. The hearing representative found no evidence that appellant contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides the right to a hearing before an OWCP hearing representative, stating:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”²

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing 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 claimant, OWCP's hearing

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.616 (a).

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 to appellant and his representative a notice of a scheduled hearing.⁵

The authority governing abandonment of hearings rests with OWCP's regulations, which provide in pertinent part as follows: 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.⁶

ANALYSIS

Following OWCP's February 7, 2013 decision denying his claim for compensation, appellant requested an oral hearing on March 8, 2013 before an OWCP hearing representative. By letter dated June 13, 2013, OWCP notified appellant that his telephone hearing was scheduled for July 15, 2013 at 9:30 a.m. Eastern time. It provided him with a toll-free number and pass code to call in at the time of the hearing. Appellant did not request a postponement, failed to call in at the scheduled hearing and failed to provide any explanation for such failure within 10 days of the scheduled date of the hearing.⁷ As all three conditions for abandonment are met, the Board finds that appellant abandoned his request for an oral hearing. The Board will therefore affirm the hearing representative's July 30, 2013 decision.

On appeal, appellant argues that OWCP should pay for his medical bills because his injury was work related. As previously noted, the Board does not have jurisdiction to review the February 7, 2013 merit decision denying appellant's claim for compensation.⁸

CONCLUSION

The Board finds that appellant abandoned his request for an oral hearing before an OWCP hearing representative on July 15, 2013.

⁴ *Id.* at 10.617(b).

⁵ See *Michelle R. Littlejohn*, 42 ECAB 463 (1991); see also *K.D.*, Docket No. 11-77 (issued August 18, 2011).

⁶ 20 C.F.R. § 10.622(f); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011). See also *M.F.*, Docket No. 14-128 (issued March 18, 2014).

⁷ 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). The June 13, 2013 OWCP letter was sent to appellant's address of record.

⁸ *Supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 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