

FACTUAL HISTORY

On September 4, 2012 appellant, then a 56-year-old carrier, filed a traumatic injury claim alleging that he suffered injuries when he tripped off a curb, fell on buttocks and then hit the backside of his head after being chased by a dog. On October 19, 2012 OWCP accepted appellant's claim for sprain of the right lumbar region of the back; contusion of scalp; concussion with loss of consciousness of 30 minutes or less; sprain of the neck; and sprain of the thoracic region of the back. By decision dated March 11, 2013, it terminated appellant's medical and wage-loss benefits for the reason that he no longer had any disability or residuals from his accepted employment-related condition.

On April 2, 2013 appellant requested a telephonic hearing before an OWCP hearing representative. By notice dated June 25, 2013, OWCP informed him of his hearing date set for August 2, 2013 at 9:30 am. It provided the telephone number of the hearing representative and a passcode. The notice was mailed to appellant at his address of record. The record reflects that he did not call in for the hearing on August 2, 2013.

By decision dated September 5, 2013, an OWCP hearing representative found that appellant had abandoned his request for a hearing. He found that appellant did not call in for the scheduled August 2, 2013 hearing and did not contact OWCP within 10 days before or after the hearing to explain this failure.

LEGAL PRECEDENT

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.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 schedule date.³ OWCP has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.⁴

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

² 20 C.F.R. § 10.616(a).

³ *Id.* at 10.617(b).

⁴ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991); see also *K.D.*, Docket No. 11-77 (issued August 18, 2011).

second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing....”⁵

ANALYSIS

By decision dated March 11, 2013, OWCP terminated appellant’s medical and wage-loss compensation benefits. Appellant made a timely request for an oral hearing and, by notice dated June 25, 2013, OWCP advised him that a telephonic oral hearing was to be held on August 2, 2013. It provided a telephone number and passcode. The notice was sent to appellant’s address of record.⁶

Appellant failed to call the designated number on August 2, 2013. He must provide an explanation for his failure to appear within 10 days. There is no evidence of record that appellant contacted OWCP within 10 days of August 2, 2013 to explain his failure to call in for the scheduled hearing. The evidence establishes that he did not request a postponement of the hearing. Additionally, appellant failed to appear at the hearing by calling in and failed to request a second hearing. The Board therefore finds that he abandoned his request for a hearing in this case.

On appeal, appellant contended that he never received the notice of the hearing. The Board notes that the June 25, 2013 notice of hearing was properly addressed and mailed to appellant at his 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.⁷ Accordingly, the Board finds that appellant was properly notified of the hearing.

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his hearing request.

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

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); *see also K.R.*, Docket No. 13-1412 (issued December 11, 2013).

⁷ *J.R.*, Docket No. 13-313 (issued August 15, 2013); *Newton D. Lashmett*, 45 ECAB 181 (1993) (mailbox rule).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 5, 2013 is affirmed.

Issued: March 18, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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