



## **FACTUAL HISTORY**

On December 28, 2010 appellant, then a 52-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 14, 2010 she sprained her lower back and buttocks moving a patient. OWCP accepted the claim for sprain of the lumbosacral joint/ligament.

On March 6, 2014 appellant filed a recurrence of disability claim (Form CA-2a) alleging that she required medical treatment beginning June 19, 2013 causally related to her August 14, 2010 employment injury.

In a decision dated July 24, 2014, OWCP found that appellant had not established a recurrence of disability beginning June 19, 2013.

On August 14, 2014 appellant requested an oral hearing before an OWCP hearing representative.

In a February 13, 2015 notice, OWCP's Branch of Hearings and Review scheduled a telephone hearing for 2:00 p.m. Eastern Time on March 23, 2015. It provided appellant with a toll-free number and pass code for the telephone hearing and OWCP mailed the notice to her address of record.

Appellant did not call in to the scheduled hearing.

By decision dated April 7, 2015, the hearing representative found that appellant had abandoned her request for a hearing. He found that appellant had received written notification of the hearing 30 days in advance, but failed to appear.<sup>3</sup> The decision further found no evidence that appellant had contacted OWCP either prior to or subsequent to the scheduled hearing to explain her failure to participate. It concluded that she had abandoned her hearing request.

On appeal appellant argues that she was unable to participate in the hearing due to an emergency illness.

## **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.<sup>4</sup> Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the hearing to the claimant and any

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<sup>3</sup> The decision indicates that the hearing was scheduled for March 24, 2015 rather than March 23, 2015; however, this appears to be a typographical error.

<sup>4</sup> 20 C.F.R. § 10.616(a).

representative at least 30 days before the scheduled date.<sup>5</sup> OWCP has the burden of proving that it properly mailed to appellant and her representative a notice of a scheduled hearing.<sup>6</sup>

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.<sup>7</sup>

### ANALYSIS

Following OWCP's July 24, 2014 decision finding that appellant had not established a recurrence of disability, she filed a timely request for an oral hearing before an OWCP hearing representative. On February 13, 2015 OWCP's Branch of Hearings and Review notified her that it had scheduled a telephone hearing for March 23, 2015 at 2:00 p.m. Eastern Time. OWCP properly sent the notice to appellant's address of record.<sup>8</sup> Appellant failed to call in for the scheduled hearing. She did not request a postponement or provide any explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing. As appellant did not request a postponement, did not call in to the scheduled hearing, and did not provide any notification to the Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that she abandoned her request for an oral hearing.<sup>9</sup>

On appeal appellant contends that she was not able to call in for the scheduled hearing due to an emergency illness. There is no evidence, however, that she provided this information to OWCP within 10 days of the scheduled hearing. The Board is precluded from reviewing evidence not before OWCP at the time it issued its final decision.<sup>10</sup>

Appellant also raises arguments relevant to the merits of her claim. As noted, however, the Board lacks jurisdiction over the July 24, 2014 merit decision of OWCP.

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<sup>5</sup> *Id.* at § 10.617(b).

<sup>6</sup> *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *K.D.*, Docket No. 11-77 (issued August 18, 2011).

<sup>7</sup> 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).

<sup>8</sup> Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. See *James A. Gray*, 54 ECAB 277 (2002).

<sup>9</sup> See *supra* note 7; see also *C.H.*, Docket No. 14-0620 (issued June 24, 2014).

<sup>10</sup> See *supra* note 7 at § 501.2(c)(1).

**CONCLUSION**

The Board finds that OWCP properly determined that appellant HAD abandoned her request for an oral hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board