

FACTUAL HISTORY

On June 2, 2014 appellant, then a 42-year-old irrigation system operator, filed a traumatic injury claim (Form CA-1) alleging that on May 30, 2014 he sustained a left shoulder injury when he attempted to adjust a check gate.

By decision dated November 10, 2014, OWCP denied appellant's claim because the medical evidence was insufficient to establish a medical condition in connection with the accepted work incident.

On November 25, 2014 appellant requested a telephone hearing before an OWCP hearing representative.

In an April 23, 2015 letter, OWCP notified appellant that a telephone hearing was scheduled for June 10, 2015 at 2:15 p.m. It provided the telephone number and passcode for accessing the hearing. The notice also noted the hearing representative's telephone number and fax number. The notice was mailed to appellant's address of record.

Appellant did not appear at the scheduled hearing.

By decision dated July 6, 2015, OWCP found that appellant abandoned his request for a hearing. The decision noted that the hearing was scheduled for June 10, 2015, but he failed to appear as instructed. The decision also found that there was no evidence that appellant had contacted OWCP prior to or subsequent to the scheduled hearing to explain his failure to participate. OWCP concluded that appellant had abandoned his hearing request.

On appeal appellant argued that he never received written notification of an oral hearing. He advised that he has a public mailbox and that a clerk at the post office informed him that the letter should have been sent *via* certified mail, requiring a signature upon receipt. Appellant also argued the merits of his claim.

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.² Unless otherwise directed in writing by the claims examiner, 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 OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁴

² *Id.* at § 8124(b)(1); 20 C.F.R. § 10.616(a).

³ 20 C.F.R. § 10.617(b).

⁴ *See Michelle R. Littlejohn*, 42 ECAB 463 (1991).

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. 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.⁵

Where it has been determined that a claimant has abandoned his or her request for a hearing, OWCP's Branch of Hearings and Review will issue a formal decision on the record.⁶

ANALYSIS

By decision dated November 10, 2014, OWCP denied appellant's claim for traumatic injury. Appellant submitted a timely request for a telephone hearing. In an April 23, 2015 letter, OWCP notified appellant of the time, telephone number, and access code for the June 10, 2015 scheduled telephone hearing. The notice was mailed to his latest address. Appellant did not appear at the appointed time. He did not request a postponement of the hearing or explain his failure to appear at the hearing within 10 days of the scheduled hearing date of June 10, 2015. The Board, therefore, finds that appellant abandoned his request for a hearing.

On appeal appellant argued that he did not receive written notification of an oral hearing and the letter should have been sent *via* certified mail, requiring a signature upon receipt, if it was important. The record indicates that OWCP's April 23, 2015 letter notifying him of the date and time of the hearing was sent to appellant's address of record. Absent evidence to the contrary, a letter mailed in the ordinary course of business is presumed to have been received by the intended recipient. This presumption is commonly referred to as the mailbox rule. It arises when the record reflects that the notice was properly addressed and duly mailed.⁷ The record contains no supporting evidence to rebut the presumption that appellant received OWCP's April 23, 2015 letter in due course. Appellant also argued the merits of his claim. However, the Board lacks jurisdiction to review the merits of the claim. Its jurisdiction is limited to review of the July 6, 2015 nonmerit decision which found that he abandoned his request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly found that appellant abandoned his request for a hearing.

⁵ 20 C.F.R. § 10.622(f).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁷ See *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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