

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

_____)	
S.K., Appellant)	
)	
and)	Docket No. 15-1822
)	Issued: November 24, 2015
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Portland, OR, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 4, 2015 appellant filed a timely appeal of an August 4, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed since the last merit decision on November 19, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2 (c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant abandoned her request for a hearing before an OWCP hearing representative.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The case has previously been before the Board. Appellant filed a Form CA-2 occupational disease claim on July 14, 2010 alleging that she sustained an emotional condition as a result of her federal employment as a computer support worker. OWCP denied the claim by decision dated November 4, 2010. On November 29, 2010 appellant advised OWCP of an address change from Portland, Oregon to Las Vegas, Nevada. In an order dated December 12, 2011, the Board remanded the case to OWCP for a proper decision.² The Board found that OWCP had not made adequate explanation for its findings as to the compensability of alleged work factors, and also noted that OWCP had not addressed some of the allegations.

By decision dated November 4, 2014, OWCP again denied the claim, finding that as appellant had not established compensable work factors, she did not sustain an emotional condition in the performance of duty. The decision was mailed to appellant at a Portland, Oregon address. On November 19, 2014 OWCP reissued the decision to the last known address in Las Vegas, NV.

In a letter postmarked November 24, 2014, and received on December 2, 2014, appellant requested an oral hearing before an OWCP hearing representative. By letter dated December 2, 2014, addressed to appellant's last known address in Las Vegas, NV, the Branch of Hearings and Review acknowledged receipt of appellant's request for an oral hearing. Appellant was advised that if the case was in posture for hearing, she could expect the case to appear on a hearing docket within six to eight months.

The record contains a memorandum of telephone call (Form CA-110) dated April 13, 2015, indicating that appellant had inquired as to the status of her hearing request. Appellant stated that she had not received any communication from OWCP's Branch of Hearings and Review. A Form CA-110 dated April 14, 2015 indicated that appellant was advised that the case had not yet been assigned to a hearing representative or placed on the hearing docket. OWCP confirmed that appellant's last known address remained correct. The record contains a Form CA-110 dated April 24, 2015 indicating that appellant had spoken to the Branch of Hearings and Review, but she asserted they were not helpful regarding a hearing date.

By letter dated June 10, 2015, mailed to appellant's last known address, appellant was advised that a hearing was scheduled for July 15, 2015 at 3:45 p.m. OWCP indicated that the hearing would be conducted by telephone conference and appellant was provided a telephone number and pass code. The record contains no further communication from appellant.

By decision dated August 4, 2015, an OWCP hearing representative determined that appellant had abandoned her request for a hearing. He indicated that appellant had not contacted OWCP either prior to or following the scheduled hearing on July 15, 2015.

² Docket No. 11-937 (issued December 12, 2011).

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.³ 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.⁴

OWCP procedures provide that 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.⁵ 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 Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP's Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.⁷

ANALYSIS

Appellant timely requested a hearing before an OWCP hearing representative with respect to the November 19, 2014 OWCP decision denying her claim for compensation. He was notified by letter dated June 10, 2015 addressed to her last known address, that a hearing was scheduled for July 15, 2015. It is well established that, in the absence of evidence to the contrary, it is presumed that a notice mailed to an addressee in the ordinary course of business was received by the addressee.⁸

The record indicates that appellant did not participate in the scheduled telephone hearing or contact OWCP prior to the scheduled hearing. In addition, appellant did not request, within 10 days of the scheduled hearing, that another hearing be scheduled.⁹ Under these circumstances, OWCP properly determined that appellant abandoned her request for a hearing.¹⁰

³ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁴ 20 C.F.R. § 10.617(b).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁶ *Id.*

⁷ *Id.*

⁸ See *Larry L. Hill*, 42 ECAB 596, 600 (1991).

⁹ *Supra* note 6.

¹⁰ See *C.C.*, Docket No. 15-0007 (issued September 17, 2015).

On appeal appellant asserts that she was “out of town” in June and July 2015 and did not receive notice of the scheduled hearing. The Board notes that notice of the hearing is mailed to a claimant “unless otherwise directed in writing by the claimant.”¹¹ Appellant had an opportunity to notify OWCP of her absence and provide an appropriate address or method of communicating the notice of the scheduled hearing. There is no indication that appellant contacted OWCP in this regard. Based on the evidence of record, OWCP properly found that appellant abandoned her hearing request in this case.

CONCLUSION

The Board finds that appellant abandoned her request for a hearing before an OWCP hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated August 4, 2015 is affirmed.

Issued: November 24, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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

¹¹ *Supra* note 4.