

ISSUE

The issue is whether OWCP properly determined that appellant abandoned her request for an oral hearing.

On appeal appellant advised that she was unable to call at the scheduled time because the telephone system was experiencing technical difficulties.

FACTUAL HISTORY

Appellant, a 50-year-old safety technician, filed an occupational disease claim (Form CA-2) alleging a right wrist condition when she fell due to factors of her federal employment.

By decision dated November 15, 2013, OWCP denied the claim because appellant had failed to establish fact of injury, finding the medical evidence insufficient to establish a diagnosis in connection with factors of her federal employment.

On December 5, 2013 appellant requested an oral hearing before an OWCP hearing representative.

In a July 3, 2014 notice, OWCP's Branch of Hearings and Review scheduled an oral hearing for 1:00 p.m. Eastern Time on August 19, 2014. It provided appellant with a toll-free number and pass code for the telephone hearing. The notice was mailed to appellant's address of record.

On August 19, 2014 appellant failed to participate in the telephone hearing.

By decision dated September 3, 2014, an OWCP hearing representative found that appellant had failed to appear at the oral hearing and had abandoned her request. She found no evidence that appellant had contacted OWCP prior to or subsequent to the scheduled hearing.

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.⁴ Unless otherwise directed in writing by the claims examiner, an OWCP 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.⁵ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁶ Section 10.622(f) of OWCP regulations provide that a claimant who fails to appear at a scheduled hearing may request in writing within 10 days after

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

⁵ 20 C.F.R. § 10.617(b).

⁶ See *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

the date set for the hearing that another hearing be scheduled.⁷ 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.⁸ Where it has been determined that a claimant has abandoned her right to a hearing, OWCP will issue a formal decision finding that the claimant has abandoned her request for a hearing.⁹

ANALYSIS

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

The record establishes that on July 3, 2014 in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled hearing to be held on August 19, 2014 at 1:00 p.m. Eastern Time by telephone. The hearing notice was properly mailed to appellant's last known address of record. As the Board has held, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.¹⁰ The Board finds that the notice was sent more than 30 days prior to the scheduled hearing date of August 19, 2014. The record establishes that appellant did not appear at the appointed time. Further, the record establishes that she failed to contact OWCP's Branch of Hearings and Reviews either to request a postponement of the hearing prior to August 19, 2014, or to explain her failure to appear at the hearing within 10 days of the scheduled hearing. Thus, the Board finds that appellant abandoned her request for an oral hearing.

CONCLUSION

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

⁷ 20 C.F.R. § 10.622(f).

⁸ *Id.*

⁹ See *N.L.*, Docket No. 15-0713 (issued July 14, 2015); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

¹⁰ See *R.M.*, Docket No. 14-1512 (issued October 15, 2014).

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board