

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

T.P., Appellant

and

**U.S. POSTAL SERVICE, GEORGETOWN
ANNEX, Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-0806
Issued: September 11, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 26, 2015 appellant filed a timely appeal from an October 7, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed between the last merit decision of OWCP dated April 9, 2014, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.³

¹ On February 26, 2015 appellant submitted a timely request for oral argument in connection with OWCP's October 7, 2014 decision. After exercising its discretion, the Board, in an order issued on August 13, 2015, denied her request for oral argument, finding that the arguments on appeal could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-0806 (issued August 13, 2015).

² 5 U.S.C. § 8101 *et seq.*

³ *See* 20 C.F.R. § 501.3(e).

ISSUE

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

On appeal, appellant explains that she was unable to attend her hearing due to a job interview on the same day. She was nearing eviction and was \$5,000.00 behind in her rent.

FACTUAL HISTORY

On January 10, 2014 appellant, then a 25-year-old city carrier assistant, filed a traumatic injury claim alleging that she sustained psychological stress as a result of being physically assaulted on that day. She stopped work on January 11, 2014.

In an April 9, 2014 decision, OWCP denied appellant's claim, finding the evidence insufficient to establish that the January 10, 2014 incident occurred as alleged. It found that she had not met her burden of proof to establish fact of injury as she failed to provide witness statements from those she named as having knowledge of the alleged incident, investigative documents from the employing establishment, or a police report documenting the claimed assault.

On May 8, 2014 appellant requested an oral hearing before an OWCP hearing representative.

By letter dated July 21, 2014, OWCP's Branch of Hearings and Review notified appellant that her hearing would be held on September 12, 2014 at 1:00 p.m. in Washington, D.C. The notice was sent to appellant's address of record.

In an October 7, 2014 decision, an OWCP hearing representative found that appellant abandoned her hearing request. Appellant failed to appear and there was no evidence that she contacted OWCP either before or after the scheduled hearing to explain her failure to appear.

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.⁴ 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 representative at least 30 days before the scheduled date.⁵ It has the burden of proving that it mailed to appellant and her representative a notice of a scheduled hearing.⁶

⁴ *Id.* at § 10.616(a).

⁵ *Id.* at § 10.617(b).

⁶ *K.D.*, Docket No. 11-77 (issued August 18, 2011); *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.⁷

ANALYSIS

Following OWCP's April 9, 2014 decision denying appellant's traumatic injury claim, appellant filed a timely request for an oral hearing before the hearing representative. On July 21, 2014 OWCP's Branch of Hearings and Review notified appellant that her hearing was scheduled for September 12, 2014 at 1:00 p.m. The notice was properly sent to her address of record.⁸ Appellant failed to attend the scheduled hearing. She did not request a postponement and failed to provide any explanation for such failure to OWCP within 10 days of the scheduled date of the hearing. As all three conditions for abandonment are met, the Board finds that appellant abandoned her request for an oral hearing.⁹

On appeal, appellant explains that she was unable to attend her hearing due to a job interview on the same day. She was nearing eviction and was \$5,000.00 behind in her rent. The Board notes, however, that the July 21, 2014 OWCP letter clearly set forth the time and date of the hearing and provided necessary information to postpone or reschedule the hearing. The Board notes that it is precluded from reviewing evidence not before OWCP at the time it issued its final decision.¹⁰ Because no timely explanation was given to OWCP's Branch of Hearings and Review, either prior to or subsequent to the scheduled September 12, 2014 hearing, the Board finds that the conditions for abandonment as specified in OWCP regulations were met. OWCP, therefore, properly found that appellant abandoned her request for a hearing.

CONCLUSION

The Board finds that appellant abandoned her request for an oral hearing before the hearing representative.

⁷ 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).

⁸ 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).

⁹ *C.H.*, Docket No. 14-620 (issued June 25, 2014).

¹⁰ See 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board