

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

S.L., Appellant)
and) Docket No. 15-1914
U.S. POSTAL SERVICE, POST OFFICE,) Issued: January 12, 2016
Sioux Falls, SD, Employer)

)

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 18, 2015 appellant timely appealed a March 23, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from July 29, 2014, the date of the most recent merit decision, 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 appellant's claim.²

¹ 5 U.S.C. § 8101 *et seq.*

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of OWCP's decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). The 180th day from the March 23, 2015 decision was September 19, 2015. Since using September 22, 2015, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is September 18, 2015, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

ISSUE

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

FACTUAL HISTORY

On August 31, 2011 appellant, then a 48-year-old city letter carrier filed an occupational disease claim (Form CA-2) alleging that she sustained right shoulder and arm pain due to the repetitive nature of her work requirements while in the performance of duty. She indicated that she first realized the condition was caused or aggravated by her employment on November 2, 2010. Appellant stopped work on November 3, 2010 and returned on August 27, 2011.

OWCP accepted the claim for other conditions of the right shoulder region not elsewhere classified; and right lateral epicondylitis. Appellant received compensation benefits. OWCP continued to develop the claim.

By decision dated July 29, 2014, OWCP found that appellant's actual earnings as a permanent modified city carrier working 40 hours per week for the employing establishment fairly and reasonably represented her wage-earning capacity. It advised that she had demonstrated the ability to perform the duties of the position for 60 days or more, and that the position was considered suitable to her partially disabling condition. OWCP found that appellant's actual earnings met or exceeded the current wages of the job held when injured, that her entitlement to compensation for wage loss ended the date she was reemployed with no loss in earning capacity, and that her wage-loss compensation must be terminated. It noted that the medical benefits were still authorized for treatment of her accepted conditions.

On August 27, 2014 appellant timely requested an oral hearing before an OWCP hearing representative.

In a January 21, 2015 letter, OWCP notified appellant that a telephone hearing was scheduled for March 10, 2015 at 3:00 p.m. Eastern Standard Time (EST). It instructed her to telephone a toll-free number and enter a pass code to connect with the hearing representative. The record reflects that the notice was mailed to appellant's address of record.

Appellant did not call at the appointed time for the scheduled hearing.

By decision dated March 23, 2015, OWCP found that appellant abandoned her requested hearing. The decision noted that the hearing was scheduled for March 10, 2015, but that she failed to appear as instructed. The decision also found that there was no indication that appellant contacted OWCP either prior or subsequent to the scheduled hearing to explain her failure to

participate. Based on these factors, OWCP concluded that she abandoned her oral hearing request.³

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 written request 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

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 telephone. 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.⁶ 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.⁷

ANALYSIS

By decision dated July 29, 2014, OWCP found that appellant's actual earnings fairly and reasonably represented her wage-earning capacity. On August 27, 2014 appellant timely requested an oral hearing.

In a January 21, 2015 letter, OWCP notified appellant that a telephone hearing was scheduled for March 10, 2015 at 3:00 p.m. EST. It mailed the notice to her address of record. OWCP instructed appellant to telephone a toll-free number and enter a pass code to connect with the hearing representative. Appellant did not telephone at the appointed time, did not request a postponement of the hearing, and did not explain her failure to appear at the hearing within 10

³ The record also contains a February 20, 2015 OWCP decision finding that appellant did not timely request a hearing with regard to a July 15, 2014 OWCP decision which denied her claim for compensation from November 3, to 15, 2010. The Board does not have jurisdiction over this matter. See 20 C.F.R. § 501.3(e).

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

⁵ 20 C.F.R. § 10.617(b).

⁶ *Id.* at § 10.622(f).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

days of the scheduled hearing date of March 10, 2015.⁸ The Board therefore finds that she abandoned her request for a hearing.

On appeal, appellant apologized for missing the hearing and argued the merits of her claim. However, the only issue before the Board is whether OWCP properly found that she abandoned her request for a hearing. The Board does not have jurisdiction over the merits of the claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2016
Washington, DC

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

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

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

⁸ *Id.* See also *supra* note 6.