

FACTUAL HISTORY

On December 3, 2014 appellant, then a 41-year-old mail carrier, filed a traumatic injury claim (Form CA-1), alleging that on November 22, 2014 she was side swiped by a truck and sustained lower and upper back stiffness and pain while in the performance of duty. She did not initially stop work. The employing establishment noted that appellant never complained of back problems, was seen by the emergency room physician, and was medically cleared.

By letter dated December 22, 2014, OWCP advised appellant that the evidence failed to establish an injury in the performance of duty. It allotted her 30 days to submit appropriate factual and medical evidence. OWCP mailed this to appellant's address of record. Appellant did not respond within the allotted time.

In a January 30, 2015 decision, OWCP denied appellant's claim, finding that the evidence of record did not establish that the injury occurred as alleged. It explained that appellant did not complete the questionnaire describing how her injury had occurred or otherwise provide any factual evidence of an injury occurring at work.

On February 26, 2015 appellant timely requested a telephonic hearing before an OWCP hearing representative. She argued that she had submitted the proper paperwork for her claim. Appellant also indicated that she did not receive the questionnaire or she would have provided the requested information.

In an August 27, 2015 letter, OWCP notified appellant that a telephone hearing was scheduled for October 14, 2015 at 10:45 a.m. Eastern Standard Time (EST). It instructed her to call 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 October 29, 2015, OWCP found that appellant abandoned her requested hearing. The decision noted that the hearing was scheduled for October 14, 2015, but she failed to appear as instructed. OWCP further found that there was no indication that appellant contacted it either prior or subsequent to the scheduled hearing to explain her failure to participate. Based on these factors, it concluded that she abandoned her hearing request.

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.³ Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the

³ *Id.* at § 8124(b)(1); 20 C.F.R. § 10.616(a).

time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁴

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.⁶

ANALYSIS

By decision dated January 30, 2015, OWCP denied appellant's claim for a traumatic injury. On February 26, 2015 appellant timely requested a telephone hearing.

In an August 27, 2015 letter, OWCP notified appellant that a telephone hearing was scheduled for October 14, 2015 at 10:45 a.m. EST. It mailed the notice to her address of record.⁷ OWCP instructed appellant to call a toll-free number and enter a pass code to connect with the hearing representative. Appellant did not call at the appointed time. She did not request a postponement of the hearing or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of October 14, 2015.⁸ The Board therefore finds that she abandoned her request for a hearing.

On appeal appellant argues the merits of her claim. She also argues that she did not receive OWCP's December 22, 2014 development letter advising her of the deficiencies in her claim. However, the only issue before the Board is whether OWCP properly found that appellant abandoned her request for a hearing. The Board does not have jurisdiction over the merits of the claim.

CONCLUSION

The Board finds that appellant abandoned her request for a hearing.

⁴ 20 C.F.R. § 10.617(b).

⁵ *Id.* at § 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 *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004) (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").

⁸ *Id.* See also *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 29, 2015 is affirmed.

Issued: May 18, 2016
Washington, DC

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

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

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