



On appeal appellant contends that she was never made aware of the hearing. She further contends that she sent a letter to the Branch of Hearings and Review on December 16, 2016 inquiring as to the status of her hearing request and was subsequently informed that she failed to meet her obligation to appear at the hearing of which she claimed to have no notice.

### **FACTUAL HISTORY**

Appellant, a 48-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging a left knee injury on December 18, 2005 due to lifting large boxes in the performance of duty. OWCP accepted the claim for left knee strain and derangement of the medial meniscus.

On December 18, 2014 appellant filed a claim for a recurrence (Form CA-2a) alleging that her left knee condition had worsened due to her federal employment to the point that she needed a total knee replacement.

By decision dated April 14, 2015, OWCP denied the recurrence claim as the medical evidence of record supported that appellant had experienced an intervening cause of injury.

On April 29, 2015 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review.

In an October 21, 2015 notice, OWCP's Branch of Hearings and Review scheduled an oral hearing for 1:00 p.m. (Eastern Standard Time) on December 2, 2015. It provided appellant with a toll-free number and passcode for the telephone hearing. OWCP advised appellant that postponement of the hearing would only be permitted upon receipt of documentation showing her nonelective hospitalization or that the death of a spouse, parent, or child prevented her attendance. The notice was mailed to appellant's address of record.

On December 2, 2015 appellant failed to participate in the telephone hearing.

By decision dated December 18, 2015, an OWCP hearing representative found that appellant had failed to appear at the oral hearing and had abandoned her request. The hearing representative found that there was no evidence that she 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.<sup>3</sup> 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.<sup>4</sup> OWCP has the burden of proving that it mailed notice of a

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

<sup>4</sup> 20 C.F.R. § 10.617(b).

scheduled hearing to a claimant.<sup>5</sup> 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 the date set for the hearing that another hearing be scheduled.<sup>6</sup> 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.<sup>7</sup> Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.<sup>8</sup>

### ANALYSIS

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

On appeal appellant contends that she was never made aware of the hearing. She further contends that she sent a letter to the Branch of Hearings and Review on December 16, 2016 inquiring as to the status of her hearing request and was subsequently informed that she had failed to meet her obligation to attend the hearing.

The record establishes that on October 21, 2015 in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed to appellant's known address a notice of the telephonic hearing, which was scheduled to be held on December 2, 2015 at 1:00 p.m. (Eastern Standard Time). 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.<sup>9</sup> The Board finds that the notice was sent more than 30 days prior to the scheduled hearing date. The record establishes that appellant did not appear at the appointed time. Further, she did not request a postponement of the hearing prior to December 2, 2015 or 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.

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<sup>5</sup> See *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

<sup>6</sup> 20 C.F.R. § 10.622(f).

<sup>7</sup> *Id.*

<sup>8</sup> 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).

<sup>9</sup> See *R.M.*, Docket No. 14-1512 (issued October 15, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2016  
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