

FACTUAL HISTORY

On November 13, 2015 appellant, then a 44-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 25, 2015² he sustained a dislocation of his right shoulder due to the weight of the mail and heavy catalogs he was carrying on his right shoulder. On the reverse side of the claim form, the employing establishment noted that appellant stopped work on June 17, 2015. OWCP accepted the claim for right shoulder impingement syndrome and authorized right shoulder surgery, which was performed on May 25, 2016. By decision dated July 1, 2016, it denied appellant's claim for continuation of pay. OWCP noted that the continuation of pay claim was denied because he had not reported his injury on a form approved by OWCP within 30 days following the injury.

Appellant received compensation on the supplemental rolls as of November 16, 2015 and on the periodic rolls as of April 3, 2016.

On July 29, 2016 OWCP received a form dated July 24, 2016 from appellant requesting a telephonic hearing before an OWCP hearing representative.

By letter dated February 8, 2017, OWCP informed appellant that his telephonic hearing would be held on March 16, 2017 at 10:45 a.m. (Eastern Standard Time). Appellant was provided with a toll-free telephone number and passcode. However, he neither called into the hearing at the appointed time, nor contacted OWCP within the requisite 10 days thereafter.

By decision dated March 28, 2017, an OWCP hearing representative found that appellant had abandoned his request for an oral hearing as appellant had received written notification of the hearing 30 days in advance, but failed to appear. The hearing representative further determined that nothing in the record established that appellant contacted, or attempted to contact OWCP before or after the scheduled hearing to explain his failure to appear. She concluded that appellant had abandoned his 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 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.⁴ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁵

² On the second page of the CA-1 form it was noted that the year of the injury was incorrectly noted as 2014 instead of 2015.

³ U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁴ 20 C.F.R. § 10.617(b).

⁵ See *M.B.*, Docket No. 10-1077 (issued March 17, 2011); *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

A hearing before OWCP's Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁶ With respect to abandonment of hearing requests, Chapter 2.1601(g) of OWCP's procedures⁷ and section 10.622(f) of its regulations⁸ provide in relevant part that failure of the claimant to appear at the scheduled hearing, failure to request a postponement, and failure to request in writing within 10 days after the date set for the hearing that another hearing be scheduled shall constitute abandonment of the request for a hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the district office.⁹

ANALYSIS

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

The record establishes that on February 8, 2017, in response to appellant's timely request for an oral hearing, OWCP's Branch of Hearings and Review mailed to appellant's last known address a notice of telephonic hearing, which was scheduled to be held on March 16, 2017 at 10:45 a.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.¹⁰ The Board notes 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. Furthermore, appellant did not request a postponement of the hearing or explain his failure to appear at the hearing, within 10 days of the scheduled hearing. Thus, the Board finds that appellant abandoned his request for an oral hearing.¹¹

On appeal appellant contends that he was unaware that the oral hearing was to be held at 10:45 a.m. Eastern Standard Time. He presumed it was scheduled for 10:45 Central Standard Time. The February 8, 2017 letter, however, advised him of the date and time of the hearing, noting that the time given as Eastern Standard Time. Thus, appellant was on notice that the hearing was scheduled to be held at 10:45 a.m. Eastern Standard Time.

⁶ *Claudia J. Whitten*, 52 ECAB 483 (2001).

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

⁸ 20 C.F.R. § 10.622(f).

⁹ *See supra* note 6; *see also id.*

¹⁰ *See C.J.*, Docket No. 16-1068 (issued October 21, 2016); *Michelle Lagana*, 52 ECAB 187 (2000).

¹¹ *Id.*

CONCLUSION

The Board finds that appellant abandoned his request for a telephonic hearing before an OWCP hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 28, 2017 is affirmed.

Issued: August 24, 2017
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