

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

T.B., Appellant

and

**U.S. CAPITOL POLICE, Washington, DC,
Employer**

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**Docket No. 16-1274
Issued: February 13, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 6, 2016 appellant filed a timely appeal from a March 30, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed from the last merit decision dated October 29, 2015, 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 over the merits of this case.

ISSUE

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

¹ Appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion pursuant to 20 C.F.R. § 501.5(a), the Board, by an October 21, 2016 order, denied appellant's request because it could adequately address appellant's contentions based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 16-1274 (issued October 21, 2016).

² 5 U.S.C. § 8101 *et seq.*

On appeal appellant contends that she did not receive notice of the hearing and that OWCP refused to supply the date and time of the hearing when she telephoned to inquire as to the status of her hearing request.

FACTUAL HISTORY

On September 12, 2015 appellant, then a 40-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right shoulder strain on September 3, 2015 when she pulled strenuously on a locked door.³ She stopped work on September 3, 2015.

Dr. John N. Van Dam, an attending family practitioner, followed appellant from September 2 to 10, 2015. He noted appellant's account of injuring her right shoulder at work on September 3, 2015 when she pulled down on a locked door. Dr. Van Dam diagnosed a right shoulder sprain/strain with possible rotator cuff tear. He held appellant off work from September 3 to 18, 2015.

Dr. Dennis A. Carlini, an attending Board-certified orthopedic surgeon, treated appellant beginning on September 17, 2015. He held appellant off work through September 24, 2015, then restricted her to limited duty. On September 19, 2015 Dr. Carlini obtained a right shoulder arthrogram showing supraspinatus tendinosis with no evidence of a tear, and a normal glenoid labrum with no evidence of a SLAP (superior labral tear from anterior to posterior) lesion. He diagnosed supraspinatus tendinitis. In an October 19, 2015 report, Dr. Carlini expanded the diagnoses to include a rotator cuff tear and SLAP lesion.

By decision dated October 29, 2015, OWCP denied the claim as causal relationship had not been established. It further found that the medical evidence of record failed to support the presence of the SLAP lesion and rotator cuff tear as diagnosed by Dr. Carlini because the medical diagnoses were not supported by diagnostic testing.

On November 12, 2015 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review. She also submitted a September 3, 2015 emergency room report.

By notice dated February 11, 2016, OWCP's Branch of Hearings and Review scheduled an oral hearing for 10:00 a.m. Eastern Standard Time (EST) on March 15, 2016. It provided appellant with the street address and room number for the 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 March 15, 2016 appellant failed to attend the hearing.

³ The record contains an authorization for medical treatment (Form CA-16) that was not signed by the employing establishment.

By decision dated March 30, 2016, an OWCP hearing representative found that appellant had failed to appear at the scheduled 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. By telephone message dated April 4, 2016, appellant indicated that the mailing address used to send the notice of oral hearing was correct but she never received same.

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.⁴ 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.⁵ OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.⁶ 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.⁷ 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.⁸ 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.⁹

ANALYSIS

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

On appeal appellant contends that she did not receive notice of the hearing. The record establishes that on February 11, 2016 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 March 15, 2016 at 10:00 a.m. EST. As

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

⁵ 20 C.F.R. § 10.617(b).

⁶ See *M.B.*, Docket No. 10-1077 (issued March 17, 2011).

⁷ 20 C.F.R. § 10.622(f).

⁸ *Id.*

⁹ 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).

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 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.

On appeal appellant also asserts that OWCP refused to supply the date and time of the hearing when she telephoned to inquire as to the status of her hearing request. However, there is no evidence of record that appellant ever requested a postponement of the hearing prior to March 15, 2016 nor did she 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.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *R.M.*, Docket No. 14-1512 (issued October 15, 2014).