



## **FACTUAL HISTORY**

On February 14, 2014 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she fell and injured her right wrist at work on that date. She stopped work on the date of injury, returned to work on February 19, 2014, and stopped work again on February 24, 2014.

On March 26, 2014 OWCP accepted appellant's claim for right wrist sprain. On June 4, 2014 it expanded the acceptance of the claim to include sprain of unspecified sites of the right knee and right leg and paid wage-loss compensation beginning on that date.

On July 13, 2015 OWCP mailed appellant a Form EN1032 to include any earnings from employment in the past 15 months and/or any monetary or in-kind compensation for volunteering. The form was sent to appellant's last known address. The letter accompanying the form specifically advised that appellant's benefits would be suspended if she failed to return the form within 30 days pursuant to 20 C.F.R. § 10.528. Appellant did not return the form within the time allotted.

In a January 7, 2016 decision, OWCP suspended appellant's wage-loss compensation benefits effective January 9, 2016 due to her failure to submit a completed Form EN1032.<sup>3</sup> The decision notified appellant that, if she completed and returned the Form EN1032, her benefits would be restored, retroactive to the date of their suspension. The decision was sent to appellant's correct address.

On January 14, 2016 appellant requested a telephone hearing with an OWCP hearing representative. The Chief of OWCP's Branch of Hearings and Review wrote to appellant on January 14, 2016 acknowledging receipt of the hearing request. The letter was mailed to her correct address.

In a July 21, 2016 letter, an OWCP hearing representative notified appellant that a telephone hearing would be held on August 30, 2016 at 2:00 p.m. Eastern Standard Time (EST). Appellant was provided a toll-free number and passcode to use to appear at the scheduled hearing. She was advised regarding the procedures for rescheduling a hearing. The hearing notice was mailed to appellant's address of record. Appellant did not appear at the hearing.

In a September 13, 2016 decision, the hearing representative found that appellant had abandoned her hearing request, which had been scheduled for August 30, 2016. She noted that appellant received written notification of the hearing 30 days in advance, but failed to appear. The hearing representative further noted that nothing in the record established that appellant had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain her absence.

---

<sup>3</sup> In the January 7, 2016 decision, OWCP noted that appellant had a change of address prior to the time of the mailing of the Form EN1032. It indicated that, while it was not notified about such change, there was a forwarding order in place and the Form EN1032 was not returned as undeliverable. Thus, OWCP presumed that appellant received the form.

## 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>4</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>5</sup> OWCP has the burden of proving that it mailed notice of a scheduled hearing to a claimant.<sup>6</sup>

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.<sup>7</sup> Chapter 2.1601.6(g) of OWCP's procedures<sup>8</sup> and section 10.622(f) of its regulations<sup>9</sup> 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.<sup>10</sup>

## ANALYSIS

On January 7, 2016 OWCP issued a final decision suspending appellant's wage-loss compensation benefits effective January 9, 2016 as she failed to complete and return a Form CA-1032. OWCP's Branch of Hearings and Review received a timely request for a telephone hearing regarding the January 7, 2016 suspension decision, which it acknowledged by letter dated January 14, 2016. Several months later, in a July 21, 2016 letter, the Branch of Hearings and Review provided 30 days in advance written notice of the hearing, which was scheduled for August 30, 2016 at 2:00 p.m., EST. OWCP mailed the July 21, 2016 notice to appellant's address of record, and it was not returned as undeliverable. Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.<sup>11</sup> This presumption is commonly referred to as the mailbox rule.<sup>12</sup> It arises

---

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

<sup>5</sup> 20 C.F.R. § 10.617(b).

<sup>6</sup> See also *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>7</sup> *Claudia J. Whitten*, 52 ECAB 483 (2001).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

<sup>9</sup> 20 C.F.R. § 10.622(f).

<sup>10</sup> See *supra* note 8 at Chapter 2.1601.6(g).

<sup>11</sup> *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

<sup>12</sup> *Id.*

when the record reflects that the notice was properly addressed and duly mailed.<sup>13</sup> The current record is devoid of any evidence to rebut the presumption.

Appellant did not appear for the August 30, 2016 scheduled hearing, and there is no indication that she requested postponement of the hearing.<sup>14</sup> Moreover, she did not submit a written request within the 10-day period following the scheduled hearing explaining her absence and requesting that another hearing be scheduled.<sup>15</sup> The regulations provide that where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>16</sup>

The record establishes that the Branch of Hearings and Review provided at least 30-days advance written notice of her scheduled hearing. As previously indicated, appellant did not request postponement of the hearing, nor did she attend the August 30, 2016 scheduled hearing. Lastly, she did not provide a written explanation for her absence within the 10-day period following the previously scheduled hearing. Under the circumstances, the hearing representative properly found that appellant abandoned her hearing request.

On appeal appellant explained that her absence from the hearing was due to a medical problem. However, she did not provide such notification to OWCP within 10 days of the scheduled hearing. All three requirements for abandonment are met and therefore the Board finds that appellant abandoned her request for a telephone hearing.

### **CONCLUSION**

The Board finds that appellant abandoned her request for a telephone hearing before OWCP's Branch of Hearings and Review.

---

<sup>13</sup> *Id.*

<sup>14</sup> *See* 20 C.F.R. § 10.622(c).

<sup>15</sup> *Id.* at § 10.622(f).

<sup>16</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 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