



## **FACTUAL HISTORY**

Appellant, a 44-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder pain as a result of lifting and repetitive movements in the performance of duty.

By decision dated May 4, 2015, OWCP denied appellant's claim as the evidence failed to establish fact of injury.

On May 19, 2015 appellant requested an oral hearing before a representative of the Branch of Hearings and Review.

In a November 19, 2015 notice, OWCP's Branch of Hearings and Review scheduled an oral hearing for 2:15 p.m. Eastern Standard Time on January 4, 2016. It provided appellant with a toll free number and pass code for the telephone hearing. OWCP instructed her to "call the toll free number listed below and when prompted, enter the pass code also listed below." It 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. No request for postponement of the hearing was made.

On January 4, 2016 appellant failed to participate in the telephone hearing. She did not explain her failure to call in within 10 days of the scheduled hearing.

By decision dated January 19, 2016, an OWCP hearing representative found that appellant had failed to appear at the oral hearing and had abandoned her request. She found that there was no evidence that she had contacted OWCP either prior to or subsequent to the scheduled hearing to explain her failure to appear.

## **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 the 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

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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).

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

<sup>6</sup> 20 C.F.R. § 10.622(f).

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 her right to a hearing, OWCP will issue a formal decision finding that the claimant has abandoned her request for a hearing.<sup>8</sup>

### **ANALYSIS**

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

The record establishes that on November 19, 2015, in response to appellant's timely request for an oral hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled hearing to be held on January 4, 2016 at 2:15 p.m. Eastern Standard Time by telephone. The hearing notice was properly mailed to appellant's last known address of record. 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 of January 4, 2016. The record establishes that appellant did not appear at the appointed time. Further, she did not request a postponement of the hearing prior to January 4, 2016 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>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 January 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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