



## ISSUE

The issue is whether appellant abandoned her request for a hearing before an OWCP hearing representative.

On appeal counsel contends that neither he nor appellant were provided with a hearing notice.

## FACTUAL HISTORY

OWCP accepted that on September 8, 2004 appellant, then a 42-year-old carrier technician, sustained a lumbosacral strain and herniated lumbar disc at L4-L5 and L5-S1 while delivering mail on her route at work. Appellant returned to full-time modified-duty work on May 18, 2007.

Appellant stopped work on December 1, 2010 because the employing establishment had withdrawn her modified-duty position on that date due to the National Reassessment Process. OWCP paid compensation for total disability commencing on that date.<sup>3</sup>

Appellant returned to work in a modified position, following a period of total disability, effective December 1, 2011.

On January 20, 2015 OWCP accepted appellant's claim for a recurrence of total disability effective November 12, 2014. It paid disability compensation for lost hours of work from November 12 to 20, 2014.

On December 10, 2015 appellant claimed 120 hours of wage-loss compensation from November 16 to December 4, 2015.

In a January 27, 2016 decision, OWCP denied appellant's claim for a recurrence of total disability from November 16 to December 4, 2015.

In a February 1, 2016 letter, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

By letter dated September 8, 2016, OWCP notified appellant that a hearing would be held on October 12, 2016 at 2:00 p.m. Eastern Standard Time (EST). It instructed her to call the provided toll-free number shortly before the scheduled hearing time and enter in a pass code when prompted. A copy of the letter was mailed to appellant at her address of record and to counsel at his address of record.

On October 12, 2016 appellant and counsel failed to participate in the telephone hearing.

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<sup>3</sup> In a June 21, 2012 decision, OWCP found that appellant received an overpayment of compensation in the amount of \$7,442.36 because she returned to work on December 1, 2011, but received compensation through February 11, 2012. It found that she was at fault in creating the overpayment.

By decision dated November 1, 2016, an OWCP hearing representative found that appellant had abandoned her request for an oral hearing. She found that appellant 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 her failure to appear. She concluded that appellant had abandoned her hearing request. A copy of the November 1, 2016 decision was mailed to appellant's address of record and to counsel at his address of record.

### **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 OWCP's Branch of Hearings and Review can be considered abandoned only under very limited circumstances.<sup>7</sup> With respect to abandonment of hearing requests, Chapter 2.1601.6(g) of OWCP's procedures provides 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>8</sup>

### **ANALYSIS**

The Board finds that OWCP properly determined that appellant had abandoned her request for a telephonic hearing.

On appeal counsel contends that neither he nor appellant were made aware of the hearing.

The record establishes that on September 8, 2016, in response to appellant's timely request for an oral hearing, OWCP mailed to appellant and counsel, at their addresses of record,

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<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> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); see also 20 C.F.R. § 10.622(f).

a notice of the telephonic hearing. The notice provided that the requested hearing was scheduled to be held on October 12, 2016 at 2:00 p.m. EST. 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 properly addressed notice was mailed more than 30 days prior to the scheduled hearing date. It provided a toll-free number and a pass code to use at the time of the hearing. Appellant did not request a postponement, failed to call in at the scheduled hearing, and failed to provide any notification for such failure to OWCP within 10 days of the scheduled date of the hearing. As she did not appear and did not comply with OWCP's requirements regarding requesting postponement and/or rescheduling within the allotted time, the Board finds that OWCP properly determined that she had abandoned her hearing request.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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