

FACTUAL HISTORY

On September 6, 2014 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2014 she injured her left knee in the performance of duty. She indicated that the injury or condition occurred from going up and down stairs. As the employing establishment did not controvert continuation of pay (COP) or challenge the merits of the case, payment of a limited amount of medical expenses was administratively approved. Once appellant's medical bills exceeded \$1,500.00, OWCP reopened the claim for consideration of the merits.

By decision dated November 28, 2014, OWCP denied the claim as fact of injury had not been established. It found the evidence was insufficient to establish that the event(s) occurred as described. OWCP also found that appellant did not submit any medical evidence to establish that a diagnosed medical condition was causally related to the work injury or event.

In an appeal request form dated March 6, 2015, appellant requested a telephonic oral hearing before a hearing representative of the Branch of Hearings and Review. On March 10, 2015 OWCP acknowledged receipt of the hearing request.

In a September 9, 2015 letter, OWCP's Branch of Hearings and Review advised appellant that a hearing was scheduled for October 15, 2015 at 11:15 a.m. Eastern Time.³ The hearing notice included a toll-free number and pass code to enable access to the telephonic 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. It mailed the hearing notice to appellant's then-current address of record.⁴ However, appellant failed to participate in the scheduled telephone hearing.

On November 4, 2015 a representative of the Branch of Hearings and Review issued a decision finding that appellant abandoned her request for a hearing, which had been scheduled for October 15, 2015. The hearing representative noted that appellant had been afforded 30-days prior notice of the scheduled hearing, which she failed to attend. The hearing representative further noted that there was no indication that appellant contacted the Branch of Hearings and Review either before or after the scheduled hearing to explain her absence.

LEGAL PRECEDENT

A claimant dissatisfied with a decision on his or her claim is entitled, upon timely request, to a hearing before an OWCP representative.⁵ Unless otherwise directed in writing by

³ As appellant resided in a different time zone (Denver, CO/Mountain Time), OWCP advised her to make certain that her local time was adjusted accordingly.

⁴ After the November 28, 2014 decision was twice returned as undeliverable because appellant "moved [and] left no [forwarding] address," appellant advised OWCP of her change of address on February 13, 2015. By letter dated February 20, 2015, OWCP acknowledged receipt of appellant's change of address request.

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

the claimant, the hearing representative will mail a notice of the time, place, and method of the oral hearing to the claimant and any representative at least 30 days before the scheduled date.⁶ 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.⁸ The “failure of the claimant to request another hearing within 10 days ... shall constitute abandonment of the request for a hearing.”⁹ With the exception of overpayment prereducement hearings, where it has been determined that a claimant has abandoned his or her right to a hearing, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.¹⁰

ANALYSIS

On November 28, 2014 OWCP issued a final decision denying appellant’s traumatic injury claim based upon her failure to establish fact of injury.¹¹ The Branch of Hearings and Review received a request for an oral hearing, which it acknowledged by letter dated March 10, 2015. By September 9, 2015 letter, the Branch of Hearings and Review provided appellant 30-days advanced written notice of her hearing, which was scheduled for October 15, 2015. OWCP mailed the September 9, 2015 notice of hearing to appellant’s then-current address of record, and it has not since been returned as undeliverable.¹² Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.¹³ This presumption is commonly referred to as the “mailbox rule.”¹⁴ It arises when the record reflects that the notice was properly addressed and duly mailed.¹⁵ The current record is devoid of evidence to rebut the presumption that appellant received the Branch of Hearings and Review’s September 9, 2015 notice of hearing.

⁶ 20 C.F.R. § 10.617(b).

⁷ *Id.* at § 10.622(f).

⁸ *Id.*

⁹ *Id.*

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

¹¹ As previously noted, the November 28, 2014 merit decision is not currently before the Board. That decision predated appellant’s January 4, 2016 application for review (AB-1) by more than 180 days, and therefore, OWCP’s November 28, 2014 decision is not subject to Board review. *See* 20 C.F.R. § 501.3(e).

¹² *See supra* note 4.

¹³ *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

¹⁴ *Id.*

¹⁵ *Id.*

Appellant did not appear for the October 15, 2015 scheduled hearing, and there is no indication that she requested postponement of the hearing.¹⁶ 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.¹⁷ The regulations provide that where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.¹⁸

On appeal appellant argued that she called in to the October 15, 2015 scheduled hearing “a minute or [two] late,” and no one answered the telephone. However, she did not advise OWCP in writing of these circumstances within 10 days after the date set for the hearing, and request that another hearing be scheduled. Appellant also contended on appeal that OWCP owed her back pay for the September 2, 2014 alleged injury. As noted, the Board lacks jurisdiction over the merits of the case.¹⁹

The record establishes that the Branch of Hearings and Review provided appellant at least 30-days advanced written notice of her scheduled hearing. Appellant did not request postponement of the hearing, nor did she attend the October 15, 2015 scheduled hearing. Lastly, appellant did not provide a written explanation for her absence within the 10-day period following the scheduled hearing. Under the circumstances, the hearing representative properly found that appellant abandoned her hearing request.

CONCLUSION

The Board finds that appellant abandoned her hearing request.

¹⁶ See 20 C.F.R. § 10.622(c).

¹⁷ *Id.* at § 10.622(f).

¹⁸ *Id.*

¹⁹ See *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2017
Washington, DC

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

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

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