

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

C.C., Appellant	)	
	)	
and	)	<b>Docket No. 18-0398</b>
	)	<b>Issued: August 22, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Saint Cloud, MN, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 19, 2017 appellant filed a timely appeal from a November 27, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days has elapsed from the last merit decision, dated May 11, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

**ISSUE**

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

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<sup>1</sup> Appellant timely requested oral argument before the Board pursuant to 20 C.F.R. § 501.5(b). In an order dated July 9, 2018, the Board, after exercising its discretion, denied the request as her arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-0398 (issued July 9, 2018).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 9, 2017 appellant, then a 26-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she sustained occupational stress causally related to factors of her federal employment. She did not stop work.

In a subsequently submitted January 21, 2017 statement, appellant related that she experienced numbness, tingling, and soreness in her hand and wrist while casing mail.

By decision dated May 11, 2017, OWCP denied appellant's occupational disease claim. It found that she had not submitted medical evidence sufficient to establish that she sustained a diagnosed condition causally related to the accepted work factors.

Appellant, in a letter dated June 10, 2017 and postmarked June 12, 2017, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On September 14, 2017 OWCP's hearing representative advised her of a scheduled telephone hearing for November 7, 2017 at 11:00 a.m. Eastern Standard Time (EST). He mailed the notice to appellant's address of record and provided her with a toll-free number to call, along with the appropriate passcode. Appellant did not, however, telephone for the hearing at the appointed time, or contact OWCP within 10 days thereafter.

By decision dated November 27, 2017, OWCP's hearing representative determined that appellant had abandoned her request for a telephone hearing. He found that she had received written notice of the telephone hearing 30 days before the scheduled hearing, but that she failed to attend the hearing or contact OWCP either before or after the scheduled hearing to explain her absence.

## **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision from OWCP may obtain a hearing by writing 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 claimant, OWCP's 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 to appellant and his or her representative a notice of a scheduled hearing.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>4</sup> *Id.* at § 10.617(b). OWCP's procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(b) (October 2011).

<sup>5</sup> See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991); see also *K.D.*, Docket No. 11-0077 (issued August 18, 2011).

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.<sup>6</sup> With respect to abandonment of hearing requests, Chapter 2.1601(g) of OWCP's procedures<sup>7</sup> and section 10.622(f) of its regulations<sup>8</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>9</sup>

### ANALYSIS

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

On May 11, 2017 OWCP issued a final decision denying appellant's occupational disease claim.<sup>10</sup> Appellant requested an oral hearing in a letter dated June 10, 2017 and postmarked June 12, 2017. By September 14, 2017 letter, a representative of OWCP's Branch of Hearings and Review informed appellant that it had scheduled a telephone hearing for November 7, 2017 at 11:00 a.m. EST.

Appellant did not appear for the November 7, 2017 scheduled hearing, and there is no indication that she requested postponement of the hearing.<sup>11</sup> Moreover, she did not, within the 10-day period following the scheduled hearing, explain her absence and request that another hearing be scheduled.<sup>12</sup> OWCP's regulations provide that where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>13</sup>

On appeal appellant contends that at the time of the scheduled hearing she was on her honeymoon and that her telephone was not working. She did not, however, advise OWCP in writing of these circumstances within 10 days after the date set for the hearing, or request that another hearing be scheduled.<sup>14</sup> Appellant also contended that she sustained carpal tunnel

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<sup>6</sup> *Claudia J. Whitten*, 52 ECAB 483 (2001).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

<sup>8</sup> 20 C.F.R. § 10.622(f).

<sup>9</sup> *See supra* note 7.

<sup>10</sup> The May 11, 2017 merit decision is not currently before the Board, as it predated appellant's December 19, 2017 appeal by more than 180 days. *See* 20 C.F.R. § 501.3(e).

<sup>11</sup> *See* 20 C.F.R. § 10.622(c).

<sup>12</sup> *Id.* at § 10.622(f).

<sup>13</sup> *Id.*; *see also C.M.*, Docket No. 16-0412 (issued September 25, 2017).

<sup>14</sup> *See C.M., id.*

syndrome due to her employment. As noted, however, the Board lacks jurisdiction over the merits of the case.<sup>15</sup>

The record establishes that OWCP provided appellant at least 30 days advanced written notice of her scheduled hearing. Appellant did not request postponement of the hearing, nor did she telephone for the November 7, 2017 scheduled hearing. Lastly, she did not provide a written explanation for her absence within the 10-day period following the scheduled hearing. OWCP, therefore, properly found that appellant abandoned her hearing request.<sup>16</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2018  
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>15</sup> See *supra* note 10.

<sup>16</sup> See *P.M.*, Docket No. 17-1958 (issued May 17, 2018).