

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

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<b>B.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0689</b>
	)	<b>Issued: August 3, 2018</b>
<b>DEPARTMENT OF THE ARMY, AVIATION &amp; MISSILE COMMAND, Corpus Christi, TX,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 12, 2018 appellant filed a timely appeal from a January 30, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated July 13, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether OWCP properly determined that appellant abandoned his request for a hearing.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 15, 2016 OWCP accepted that appellant, then a 64-year-old electrical avionics inspector, sustained a sprain of the medial collateral ligament of his left knee on October 20, 2016 when he climbed into the cockpit of a Blackhawk helicopter and hit his left knee on a metal step while in the performance of duty. Appellant did not stop work.

In a November 23, 2016 report, Dr. Mark Yelderman, an attending Board-certified anesthesiologist, with whom appellant sought treatment, indicated that he was not prescribing any medication for appellant and that he was releasing appellant from his care.

On April 24, 2017 appellant filed a notice of recurrence (Form CA-2a) claiming a recurrence of his need for medical treatment on December 12, 2016 due to his October 20, 2016 employment injury. He submitted medical evidence in support of his claim, including a December 12, 2016 report of Dr. Yelderman.

By decision dated July 13, 2017, OWCP denied appellant's claim for a recurrence of disability on December 12, 2016 due to his October 20, 2016 employment injury because he failed to submit sufficient medical evidence to establish that he required additional medical treatment due to a worsening of his accepted work-related condition, without intervening cause.

On July 24, 2017 appellant requested a hearing with a representative of OWCP's Branch of Hearings and Review.

In a November 17, 2017 letter, a representative of OWCP's Branch of Hearings and Review notified appellant that a telephone hearing was scheduled for January 19, 2018 at 1:30 p.m., Eastern Standard Time, and provided a telephone number for appellant to call at that date and time.

By decision dated January 30, 2018, the same OWCP hearing representative determined that appellant abandoned his request for a hearing. She indicated that he had failed to appear for the hearing scheduled for January 19, 2018 despite receiving proper notice at least 30 days in advance, and did not contact OWCP either prior or subsequent to the scheduled hearing to explain his failure to appear.

## **LEGAL PRECEDENT**

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>2</sup> Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the hearing to the claimant and any

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<sup>2</sup> 20 C.F.R. § 10.616(a).

representative at least 30 days before the scheduled date.<sup>3</sup> OWCP has the burden of proving that it properly mailed to the claimant and any representative a notice of a scheduled hearing.<sup>4</sup>

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. Where good cause for failure to 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.<sup>5</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned his request for a hearing.

Following OWCP's July 13, 2017 decision denying his claim for a recurrence of a need for medical treatment, appellant filed a timely request for a telephone hearing with a representative of OWCP's Branch of Hearings and Review. In a November 17, 2017 letter, OWCP's hearing representative notified appellant of the scheduled telephone hearing for January 19, 2018 at 1:30 p.m., Eastern Standard Time, and provided a telephone number for appellant to call at that date and time. OWCP's Branch of Hearings and Review properly sent the notice to appellant's address of record.<sup>6</sup> Appellant failed to call in for the scheduled hearing.<sup>7</sup> He did not request a postponement or provide any explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing. As appellant did not request a postponement, did not call in to the scheduled hearing, and did not provide any notification to OWCP within 10 days of the scheduled hearing explaining his failure to appear, the Board finds that he abandoned his request for an oral hearing.<sup>8</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for a hearing.

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<sup>3</sup> *Id.* at § 10.617(b).

<sup>4</sup> *T.P.*, Docket No. 15-0806 (issued September 11, 2015).

<sup>5</sup> 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

<sup>6</sup> Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See James A. Gray*, 54 ECAB 277 (2002).

<sup>7</sup> On appeal appellant contends that he called OWCP's hearing representative at the appropriate time, but was not able to get through on the telephone line to speak to anyone. However, appellant did not explain how the evidence of record supports this contention.

<sup>8</sup> *See supra* note 5; *see also R.S.*, Docket No. 15-1358 (issued December 4, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2018  
Washington, DC

Christopher J. Godfrey, 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