

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

M.V., Appellant

and

**DEPARTMENT OF THE ARMY, RED RIVER
ARMY DEPOT, Texarkana, TX, Employer**

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**Docket No. 17-1795
Issued: March 1, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 22, 2017 appellant filed a timely appeal from a July 24, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed from OWCP's latest merit decision dated January 23, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.³

¹ Appellant timely requested oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated February 1, 2018, the Board exercised its discretion and denied the request for oral argument as the Board did not have jurisdiction over the merits of the case and as the issue on appeal could be adequately addressed on the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1795 (issued February 1, 2018).

² 5 U.S.C. § 10.617(b).

³ The Board notes that appellant submitted additional evidence after OWCP rendered its July 24, 2017 decision. The Board's jurisdiction is limited to evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

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

On appeal appellant contends that he never received notice of the hearing.

FACTUAL HISTORY

On November 14, 2016 appellant, then a 38-year-old firefighter/emergency medical technician, filed a traumatic injury claim (Form CA-1) alleging that, on November 5, 2016, he twisted his left knee when walking over debris while fighting a fire at the B-499 warehouse. He did not indicate on the claim form whether he had stopped work.

By decision dated January 23, 2017, OWCP denied appellant's claim, as the evidence of record was insufficient to establish that the claimed incident occurred as alleged.

On an appeal request form dated January 31, 2017, appellant requested an oral hearing before an OWCP hearing representative. On February 28, 2017 OWCP acknowledged receipt of the hearing request.

In a June 8, 2017 letter, a representative of OWCP's Branch of Hearings and Review advised appellant that a telephonic hearing was scheduled for July 12, 2017 at 2:30 p.m. Eastern Standard Time (EST).⁴ 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 be permitted only upon receipt showing that his nonelective hospitalization or the death of a spouse, parent, or child prevented his attendance. It mailed the hearing notice to appellant's last known address.

At the appointed time of the scheduled telephonic hearing, appellant neither called, nor contacted OWCP's Branch of Hearings and Review within the requisite 10 days thereafter.

On July 24, 2017 a representative of the Branch of Hearings and Review issued a decision finding that appellant abandoned his request for a hearing which had been scheduled for July 12, 2015. The hearing representative noted that appellant had been afforded notice 30 days prior to the scheduled hearing, which he 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 his 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 the claimant, the hearing representative will mail a notice of the time, place, and method of the

⁴ As appellant resided in a different time zone (Texarkana, TX/Central Time), OWCP advised him to make certain that his local time was adjusted accordingly.

⁵ 5 U.S.C. § 8124(b).

oral hearing to the claimant and to any representative at least 30 days before the scheduled hearing date.⁶

A hearing before OWCP's Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁷ With respect to abandonment of hearing requests, Chapter 2.1601(g) of OWCP's procedures⁸ and section 10.622(f) of its regulations⁹ 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.¹⁰

ANALYSIS

OWCP's Branch of Hearings and Review received appellant's January 31, 2017 timely request for an oral hearing which it acknowledged by letter dated February 28, 2017. By letter dated June 8, 2017, the hearing representative with OWCP's Branch of Hearings and Review provided appellant 30 days written notice of his hearing, which was scheduled for July 12, 2017 at 2:30 p.m. EST. OWCP mailed the June 8, 2017 notice of hearing to appellant's last known address, and it was not returned as undeliverable. Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.¹¹ The presumption is commonly referred to as the "mailbox rule."¹² It arises when the record reflects that the notice was properly addressed and duly mailed.¹³ The current record is devoid of evidence to rebut the presumption that appellant received the Branch of Hearings and Review's June 8, 2017 notice of hearing.

The telephonic hearing notice was properly addressed to appellant's last known address.¹⁴ Appellant did not call-in as instructed for the July 12, 2017 scheduled telephonic hearing and there is no indication that he requested postponement of same.¹⁵ Moreover, he did not submit a

⁶ 20 C.F.R. § 10.617(b).

⁷ *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁹ 20 C.F.R. § 10.622(f).

¹⁰ *Id.*

¹¹ *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

¹² *Id.*

¹³ *Id.*

¹⁴ *See K.F.*, Docket No. 17-1035 (issued August 24, 2017).

¹⁵ *See* 20 C.F.R. § 10.622(c).

written request within the 10 days after the date set for the hearing and request that another hearing be scheduled. Under the circumstances, OWCP's hearing representative properly found that appellant abandoned his hearing request.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2017 is affirmed.

Issued: March 1, 2018
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