

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

_____)	
B.B., Appellant)	
)	
and)	Docket No. 18-1084
)	Issued: November 16, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Portland, OR, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 3, 2018 appellant filed a timely appeal from a December 19, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated June 19, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its December 19, 2017 decision. Section 501.2(c)(1) of the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal.

ISSUE

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

FACTUAL HISTORY

On May 10, 2017 appellant, then a 52-year-old lead sales service associate, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment. She indicated that she previously had an approved claim for carpal tunnel syndrome 20 years earlier.

By decision dated June 19, 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, on July 6, 2017, requested an oral hearing before an OWCP hearing representative. On October 18, 2017 OWCP advised her that it had scheduled a telephone hearing for December 4, 2017 at 1:30 p.m. Eastern Standard Time (EST). It mailed the notice to appellant's address of record and provided her with a toll-free number to call, as well as 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 December 19, 2017, an OWCP 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 had failed to attend the hearing or contact OWCP either before or after the scheduled hearing to explain her absence.

On appeal appellant contends that she telephoned for the scheduled hearing at 1:30 p.m. Pacific Standard Time (PST) instead of 1:30 p.m. EST. She maintains that she left a message for OWCP's hearing representative after she realized that she had called at the incorrect time, but that he never returned her telephone call. Appellant also raises arguments regarding the merits of her claim.

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 to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.³ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place

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

of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁴ OWCP has the burden of proving that it mailed to appellant and his or her representative a notice of a scheduled hearing.⁵

A hearing before the Branch of Hearings and Review can be considered abandoned only under very limited circumstances.⁶ With respect to abandonment of hearing requests, Chapter 2.1601(g) of OWCP's procedures⁷ and section 10.622(f) of its regulations⁸ 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.⁹

ANALYSIS

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

On June 19, 2017 OWCP issued a final decision denying appellant's occupational disease claim.¹⁰ Appellant requested an oral hearing in a letter dated July 6, 2017 and postmarked July 12, 2017. By letter dated October 18, 2017, OWCP's Branch of Hearings and Review informed appellant that it had scheduled a telephone hearing for December 4, 2017 at 1:30 p.m. EST.

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 telephone for the December 4, 2017 scheduled hearing at the appropriate time. 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.¹¹

⁴ *Id.* at § 10.617(b). OWCP 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).

⁵ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991); see also *K.D.*, Docket No. 11-77 (issued August 18, 2011).

⁶ *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁷ Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.1601.6(g) (October 2011).

⁸ 20 C.F.R. § 10.622(f).

⁹ See *supra* note 6.

¹⁰ As previously noted, the June 19, 2017 merit decision is not currently before the Board, as it predated appellant's May 3, 2018 appeal by more than 180 days. See 20 C.F.R. § 501.3(e).

¹¹ See *P.M.*, Docket No. 17-1958 (issued May 17, 2018).

On appeal appellant contends that she telephoned for the hearing at 1:30 p.m. PST rather than 1:30 p.m. EST. As explained above, 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.¹² Appellant also contends on appeal that she sustained carpal tunnel syndrome due to her employment. As noted, however, the Board lacks jurisdiction over the merits of the case.¹³

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 December 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2018
Washington, DC

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

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

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

¹² See *C.M.*, Docket No. 16-0412 (issued September 25, 2017).

¹³ See *supra* note 10.