

FACTUAL HISTORY

On January 30, 2015 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her hands and knees on January 27, 2015 when she slipped and fell on ice while in the performance of duty. She stopped work the next day on January 28, 2015, and received continuation of pay. On April 15, 2015 OWCP accepted appellant's claim for bilateral knee abrasion, left wrist sprain, left shoulder sprain, and low back sprain. For the period March 14 through May 23, 2015, it paid compensation for temporary total disability. Thereafter, OWCP compensated appellant for periods of intermittent wage loss through September 7, 2015.

After September 7, 2015, appellant again stopped work on October 10, 2015 and subsequently filed a claim for compensation (Form CA-7) for temporary total disability through November 4, 2015.

Appellant came under the care of Dr. Ashif Jethava, a Board-certified internist, from October 28, 2015 to January 27, 2016, for chronic low back pain. Dr. Jethava diagnosed low back pain radiating to the right lower extremity, and left hip and left knee pain secondary to chronic degenerative joint disease versus a work-related injury. In notes dated October 28 to November 9, 2015, he indicated that appellant was disabled from work from October 9 to 29, 2015; October 31 to November 3, 2015; and November 7 to 8, 2015. On January 13, 2016 appellant presented with chronic low back pain and reported being off work from January 9 to 12, 2016.

Appellant also submitted a claim for compensation (Form CA-7) for the period January 9 to 12, 2016.

In correspondence dated March 28 and July 1, 2016, OWCP advised appellant of the need to submit additional medical evidence to establish her claim for compensation for the periods October 10 to November 4, 2015 and January 9 to 12, 2016.

Dr. Jethava continued to treat appellant for complaints of chronic neck and radicular low back pain. In a May 24, 2016 letter, he advised that she was currently under his care due to a January 27, 2015 work-related injury. Dr. Jethava further advised that appellant was unable to work due to back pain from October 9 to 29, 2015; October 31 to November 3, 2015; November 7 to 8, 2015; and January 9 to 12, 2016.

In two separate decisions of even date, October 26, 2016, OWCP denied appellant's claims for compensation for the periods October 10 to November 4, 2015 and January 9 to 12, 2016.

On November 23, 2016 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.³

³ Appellant indicated her preference for a telephone hearing.

By letter dated November 30, 2016, OWCP acknowledged appellant's request for an oral hearing. The letter also advised appellant of her rights and responsibilities with respect to informal hearings under FECA.

On January 18, 2017 OWCP's hearing representative notified appellant that a telephone hearing would be held on February 22, 2017 at 1:45 p.m., Eastern Standard Time. He instructed her to call the provided toll-free number shortly before the hearing time and enter the pass code to gain access to the conference call. OWCP's hearing representative mailed the January 18, 2017 notice of hearing to her address of record.⁴

By decision dated March 3, 2017, OWCP's hearing representative found that appellant had abandoned her request for a hearing. He determined that appellant received 30 days advanced written notice of the scheduled February 22, 2017 hearing, but failed to appear. The hearing representative further noted that there was no indication in the record that appellant contacted OWCP either prior or subsequent to the scheduled hearing to explain her failure to appear. Under the circumstances, he deemed that appellant abandoned her request for a hearing.

LEGAL PRECEDENT

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.⁵ Unless otherwise directed in writing by the claimant, the representative of OWCP's Branch of Hearings and Review will mail a notice of the time, place, and method of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁶ OWCP has the burden of proving that it mailed notice of a scheduled hearing to the claimant and any representative.⁷ 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 known as the mailbox rule.⁸

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.⁹ With the exception of overpayment preresoupment

⁴ On January 23, 2017 appellant submitted another request for an oral hearing with respect to OWCP decision(s) dated October 26, 2016.

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

⁶ 20 C.F.R. § 10.617(b).

⁷ *T.P.*, Docket No. 15-0806 (issued September 11, 2015).

⁸ See *James A. Gray*, 54 ECAB 277, 280 (2002).

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

hearings, where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP's Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned the request for a hearing.¹⁰

ANALYSIS

In two separate decisions dated October 26, 2016, OWCP denied appellant's claims for compensation for the periods October 10 to November 4, 2015 and January 9 to 12, 2016. Appellant timely requested an oral hearing. OWCP acknowledged her request on November 30, 2016, and in a January 18, 2017 letter, the hearing representative notified her that a telephone hearing was scheduled for February 22, 2017 at 1:45 p.m. Eastern Standard Time. However, the hearing did not occur as scheduled.

Both, the November 30, 2016 acknowledgment letter and the January 18, 2017 30-day prehearing notification, were mailed to appellant's address of record, and neither correspondence was returned to OWCP as undeliverable. Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received.¹¹ Appellant has not submitted any evidence indicating that she did not receive the January 18, 2017 hearing notification. As such, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. The presumption arising under the mailbox rule, has not been rebutted.

The January 18, 2017 hearing notification included a toll-free number and a pass code that appellant was to use in order to access the scheduled February 22, 2017 telephone hearing. The hearing did not occur as scheduled. Appellant argued that she was unable to get through to call. While she may have experienced difficulty calling in at the appointed time, there is no evidence in the record that she timely advised OWCP of her calling difficulties. Also, appellant did not submit a written request within 10 days after the February 22, 2017 scheduled hearing requesting that another hearing be scheduled. Under the above-noted circumstances, OWCP's hearing representative properly determined that appellant abandoned her request for an oral hearing.¹²

CONCLUSION

The Board finds that appellant abandoned her request for an oral hearing.

¹⁰ *Id.* at Chapter 2.1601.6(g).

¹¹ *See James A. Gray, supra* note 8.

¹² *See* 20 C.F.R. § 10.622(f).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 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