



as he stopped a crane controller from striking his face. He stopped work briefly on the date of injury and returned to work on the same day.

In support of his claim, appellant submitted a Notification of Personnel Action (Form SF-50) and the official position description for a machinist. No other evidence was received.

On the reverse side of the claim form, the employing establishment controverted the claim, contending that fact of injury had not been established and that the claim was not filed within 30 days of injury.

OWCP, by development letter dated April 19, 2017, advised appellant that the evidence submitted was insufficient to establish his claim. It informed him of the type of medical and factual evidence needed and also advised him that the evidence was insufficient to establish that he timely filed his claim. OWCP provided a questionnaire for appellant's completion. It also requested that the employing establishment respond to his allegations and provide medical evidence, if he had been treated at its medical facility. OWCP afforded appellant and the employing establishment 30 days for response to its requests.

In a memorandum dated April 26, 2017, the employing establishment responded to OWCP's development letter, contending that appellant had not submitted any factual or medical evidence to establish a work-related shoulder injury. It restated its prior contention that his claim was untimely filed.

Appellant submitted an April 24, 2017 factual statement in response to OWCP's development letter. He related that, on August 14, 2015, he was in his work area when a coworker came up behind him and threw a crane control box over a conduit which was about eight feet above him. Appellant further related that he caught the controller just inches from his face. He believed that his coworker purposely threw the controller because the coworker and the coworker's buddy were laughing about the incident. Appellant reported his injury to his supervisor who made him go to the dispensary. He noted that he had shoulder pain for a week and sought medical treatment. Appellant eventually underwent surgery to repair a torn tendon in his shoulder. He claimed that he timely reported his injury to his supervisor. Appellant's supervisor told appellant that he had filed a Form CA-1 and not to worry since he had taken care of it. Appellant further claimed that he was told that he had three years to file a claim. He indicated that he delayed filing his claim due to his surgery. Appellant further indicated that he tried to file a claim one year ago, but was unable to log on. He eventually sought help from an individual regarding the filing of his claim.

In a November 2, 2015 medical report, Dr. Eryn A.C. Stansfield, an employing establishment physician and family practitioner, noted the date of injury as November 2, 2015 and related a history of injury as striking against other stationary object, initial encounter. She examined appellant and assessed sprain of the right rotator cuff capsule, initial encounter. Dr. Stansfield also assessed work-related right shoulder pain with signs of rotator cuff impingement and irritation.

By decision dated May 19, 2017, OWCP denied appellant's traumatic injury claim. It found that he established that he was a federal civilian employee who filed a timely claim, but denied the claim as the evidence of record was insufficient to establish that the August 14, 2015

incident occurred as alleged. OWCP also found that the medical evidence of record did not contain a medical diagnosis in connection with the claimed injury or event(s).

On an appeal request form dated and postmarked May 30, 2017, appellant requested an oral hearing before an OWCP hearing representative. On June 5, 2017 OWCP acknowledged receipt of the hearing request.

In an October 5, 2017 letter, a representative of OWCP's Branch of Hearings and Review advised appellant that a telephonic hearing was scheduled for November 16, 2017 at 1:00 p.m. Eastern Standard Time (EST).<sup>2</sup> The hearing notice included a toll-free number and pass code to enable access to the telephonic hearing. The hearing representative 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. The hearing notice was mailed to his address of record.

Appellant did not call in on November 16, 2017 at the appointed time of the scheduled telephonic hearing. He also did not contact OWCP's Branch of Hearings and Review within the requisite 10 days thereafter.

By decision dated November 28, 2017, a representative of OWCP's Branch of Hearings and Review found that appellant had abandoned his request for a hearing which had been scheduled for November 16, 2017. The hearing representative noted that appellant received a written notice of the hearing 30 days before the scheduled hearing, but did not appear and that he failed to timely explain his absence from the scheduled hearing.

### **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.<sup>3</sup> Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time, place, and method of the oral hearing to the claimant and any representative at least 30 days before the scheduled date.<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.<sup>5</sup> Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>6</sup> The "failure of the claimant to request another hearing within 10 days shall constitute abandonment of the request for a hearing."<sup>7</sup> With the exception of overpayment prerecoupment hearings, where it has

---

<sup>2</sup> As appellant resided in a different time zone (Ogden, UT/Mountain Time), OWCP advised him to make certain that his local time was adjusted accordingly.

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

<sup>4</sup> *Id.* at § 10.617(b).

<sup>5</sup> *Id.* at § 10.622(f).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

been determined that a claimant has abandoned his or her right to a hearing, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.<sup>8</sup>

### ANALYSIS

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

On March 19, 2017 OWCP denied appellant's traumatic injury claim based upon his failure to establish fact of injury. OWCP's Branch of Hearings and Review received appellant's May 30, 2017 timely request for an oral hearing which it acknowledged by letter dated June 5, 2017. By letter dated October 5, 2017, the hearing representative with OWCP's Branch of Hearings and Review provided appellant 30 days written notice of his telephonic hearing, which was scheduled for November 16, 2017 at 1:00 p.m. EST. OWCP mailed the October 5, 2017 notice of hearing to appellant's address of record. Appellant did not telephone at the appointed time, nor did he request postponement of the hearing, or explain his failure to appear at the hearing within 10 days of the scheduled hearing date of November 16, 2017.<sup>9</sup>

On appeal, appellant contends that he did not receive a letter from OWCP scheduling a telephone hearing on November 16, 2017. Under the "mailbox rule," it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>10</sup> The record supports that OWCP's letter dated October 5, 2017 was sent to appellant at the address of record and does not indicate that it was returned as undeliverable. The Board finds that he failed to request a postponement of the scheduled hearing, failed to appear at the scheduled hearing, and did not provide any notification for such failure within 10 days of the scheduled date. Appellant, therefore, abandoned his request for an oral hearing.<sup>11</sup>

### CONCLUSION

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

---

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

<sup>9</sup> See 20 C.F.R. § 10.622(c).

<sup>10</sup> *Kenneth E. Harris*, 54 ECAB 502, 505 (2003); *A.C. Clyburn*, 47 ECAB 153 (1995).

<sup>11</sup> *P.M.*, Docket No. 17-1958 (issued May 17, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 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