United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 17-1309**
	)	**Issued: September 7, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Montgomery, NY, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 30, 2017 appellant filed a timely appeal from an April 18, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated November 23, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On October 6, 2016 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on October 5, 2016, she injured her lower back while in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. She explained that her back pain worsened throughout the day and that she only did her "job of lifting, stretching." Appellant stopped work on October 5, 2016. The employing establishment controverted the claim, noting that she initially stated that she suffered a recurrence of a prior back injury, but the next day she changed her statement to a "new injury."

OWCP received two handwritten statements from appellant, which were both dated October 5, 2016. In one statement, appellant indicated that she reinjured her back on October 5, 2016 and explained that the heavy workload over the course of the past two days aggravated an old work-related back injury. Appellant further explained that her activities on October 5, 2016, which included lifting trays/parcels and reaching for mailboxes, irritated her back, and throughout the day it progressively worsened to the point where it became unbearable.

In appellant's second statement of October 5, 2016 she noted that she injured her back at work that day due to a combination of daily work activities, which included lifting mail trays/parcels, reaching for mailboxes/parcels, and switching around trays. She further indicated that her injury/condition progressively worsened throughout the day and by the end of her workday the pain was unbearable.

OWCP received an October 7, 2016 duty status report (Form CA-17) signed by Dr. Vladimir Andries, an attending Board-certified internist, who diagnosed acute left-sided sciatica. Dr. Andries also provided an October 7, 2016 attending physician's report from the authorization for examination and/or treatment (Form CA-16) issued by the employing establishment on October 6, 2016. He diagnosed acute back strain. Both reports noted an October 6, 2016 date of injury. On the Form CA-16 Dr. Andries indicated that appellant's condition was due to "lifting/carrying heavy loads." He further advised that she was totally disabled from October 7 through 14, 2016.

In an October 21, 2016 development letter, OWCP informed appellant that the information received to date was insufficient to establish her claim for compensation benefits. It requested that she submit additional factual information and medical evidence, and afforded her 30 days to submit the necessary evidence.

Appellant submitted a November 14, 2016 statement explaining that she had sustained a back injury four years prior and initially thought that her current condition might be related. She further noted that her previous injury was on the right side, and that currently her left side was hurting.

OWCP also received additional medical evidence from Dr. Andries dated October 7 and 14, and November 9, 2016, as well as an undated progress report. Appellant's diagnoses included sciatica and lumbar intervertebral disc disorder without myelopathy. In his October 7 and 14, 2016 narrative reports, Dr. Andries noted an October 7, 2016 date of injury. He indicated that appellant had an "acute back syndrome caused by repetitive lifting." On November 9, 2016 Dr. Andries advised that appellant could return to work without limitations.

By decision dated November 23, 2016, OWCP denied appellant's traumatic injury claim, finding that she failed to establish causal relationship between her diagnosed condition and the accepted October 5, 2016 employment incident.

On December 19, 2016 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On her appeal request form, she provided an address (P.O. Box) different than her previous address of record.

In a February 15, 2017 letter, OWCP advised appellant that a hearing was scheduled for April 5, 2017 at 9:00 a.m., Eastern Standard Time, at a listed address in New York City. It mailed the February 15, 2017 letter to the address that was of record prior to the time she provided a new address on her December 19, 2016 appeal request form.

Appellant did not appear for the scheduled hearing.

By decision dated April 18, 2017, OWCP found that appellant had abandoned her request for a hearing. It determined that she received a written notice of the hearing 30 days before the scheduled hearing, but did not appear and did not explain her absence either before or after the scheduled 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.[2] 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.[3] OWCP has the burden of proving that it mailed notice of a scheduled hearing to the claimant and any representative.[4]

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.[5]

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.[6]

[2] *Id.* at § 8124(b)(1); 20 C.F.R. § 10.616(a).

[3] *Id.* at § 10.617(b).

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

[5] 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).

[6] *See James A. Gray*, 54 ECAB 277, 280 (2002).

ANALYSIS

The Board finds that OWCP improperly determined that appellant abandoned her request for a hearing.

The Board finds that the record does not establish that the notice of hearing was properly addressed and mailed to appellant. On December 19, 2016 appellant informed OWCP that she was no longer living at her address of record by providing a new address (P.O. Box). However, on February 15, 2017, OWCP did not mail the notice of hearing to that address. Instead, it mailed the hearing notice to the address that was of record prior to the time appellant provided her new address on December 19, 2016. As the record demonstrates that OWCP did not mail the notice of oral hearing to her at her last known address, the presumption inherent in the mailbox rule, *i.e.*, that a notice properly addressed and mailed to an individual in the ordinary course of business was received by that individual, is rebutted.[7] Thus, the Board finds that the record contains no evidence that appellant was properly notified of the oral hearing scheduled for April 5, 2017.[8]

For these reasons, OWCP has not met its burden of proof that it mailed appellant the notice of the scheduled hearing. The case shall be remanded to OWCP to provide her the opportunity for a hearing.[9]

CONCLUSION

The Board finds that OWCP improperly determined that appellant abandoned her request for a hearing.

[7] *Id. See also R.W.*, Docket No. 15-1886 (issued February 4, 2016); *Joseph R. Giallanza*, 55 ECAB 186, 191 (2003).

[8] *See R.C.*, 59 ECAB 521, 524 (2008).

[9] The case record includes an October 6, 2016 CA-16 form. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2017 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded to OWCP for action consistent with this decision.

Issued: September 7, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board