

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

E.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port Orchard, WA, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 19-0567
Issued: August 5, 2019**

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 January 16, 2019 appellant filed a timely appeal from a November 28, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated May 24, 2018, 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.

ISSUE

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

FACTUAL HISTORY

On March 20, 2018 appellant, then a 28-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained kidney stones causally related to factors of

¹ 5 U.S.C. § 8101 *et seq.*

her federal employment. She indicated that, by nature of her duties, restrooms were not readily available along her route. As such, appellant restricted her water consumption, which caused kidney stones to grow to the point where they became difficult to pass. On the reverse side of the claim form the employing establishment related that she stopped work on March 15, 2018.

In a development letter dated March 29, 2018, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim, including a detailed description and factual corroboration of the identified employment factors, and a report from her physician explaining how and why her employment tasks would cause the claimed conditions. It also requested that she respond to a questionnaire to substantiate the factual elements of her claim. OWCP afforded appellant 30 days to submit the requested evidence.

In a letter dated April 11, 2018, the employing establishment controverted appellant's occupational disease claim. It noted that there are multiple restrooms approved for her use even though they would take her off of her route. The employing establishment related that at no point was appellant instructed not to use the restroom during her route.

On April 30, 2018 appellant submitted her responses to OWCP's factual questionnaire. She indicated that she did not have one regular route, and was responsible for a different route assigned each day. Appellant noted that she developed kidney stones because of a lack of restrooms and the constant restriction of fluid intake.

In a report dated May 1, 2018, Dr. Samay Jain, a Board-certified urologist, diagnosed bilateral kidney stones. He indicated that appellant was examined on March 2, 6, 20, and April 3, 2018 and underwent surgery to remove the stones on April 16, 2018. Dr. Jain noted that he was unsure if specific exposures in her federal employment contributed to her kidney stones, but she should simply increase her fluid intake moving forward.

By decision dated May 24, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish fact of injury.

On June 26, 2018 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review. In a September 18, 2018 letter, OWCP's hearing representative notified her that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for November 16, 2018 at 3:00 p.m. Eastern Standard Time (EST). The hearing notice was mailed to appellant's last known address and she was provided with a toll-free number to call and the appropriate passcode. Appellant did not, however, call in for the hearing at the appointed time. She also did not contact OWCP's Branch of Hearings and Review within 10 days thereafter to explain her absence.

By decision dated November 28, 2018, OWCP's hearing representative determined that appellant had abandoned her request for a telephonic hearing.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by 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.² Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place 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 properly mailed to a claimant and any representative of record a notice of a scheduled hearing.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

ANALYSIS

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

Following OWCP's May 24, 2018 initial decision denying appellant's occupational disease claim, she filed a timely request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. In a September 18, 2018 letter, OWCP's hearing representative notified her that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for November 16, 2018 at 3:00 p.m. EST. OWCP properly mailed the hearing notice to appellant's last known address.⁶ Appellant failed to call-in for the scheduled hearing using the provided telephone number and passcode. She did not request a postponement or provide an explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing. The Board thus finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.⁷

CONCLUSION

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

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *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 2.1601.6(g) (October 2011). *See also A.J.*, Docket No. 18-0830 (issued January 10, 2019).

⁶ 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 called the mailbox rule. *See id.* Appellant did not submit evidence of nondelivery of OWCP's September 18, 2018 hearing notice such that the presumption of receipt would be rebutted.

⁷ *See supra* note 5; *see also R.S.*, Docket No. 15-1358 (issued December 4, 2015).

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2019
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