

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

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<b>A.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0830</b>
	)	<b>Issued: January 10, 2019</b>
<b>DEPARTMENT OF COMMERCE,</b>	)	
<b>U.S. CENSUS BUREAU, Pedricktown, NJ,</b>	)	
<b>Employer</b>	)	
_____	)	

*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 March 12, 2018 appellant filed a timely appeal from a February 26, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated August 17, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated December 7, 2018, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-0830 (issued December 7, 2018).

## ISSUE

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

## FACTUAL HISTORY

On May 17, 2010 appellant, then a 55-year-old enumerator, sustained multiple injuries to her neck, left hand/wrist, chest, back, and knees due to an employment-related vehicular accident. She stopped work on May 17, 2010 and OWCP paid her disability compensation on the daily rolls commencing June 2, 2010.

On September 23, 2010 appellant filed a claim for compensation (Form CA-7) seeking a schedule award due to her accepted employment conditions.

By decision dated August 17, 2017, OWCP granted appellant a schedule award for seven percent permanent impairment of her left upper extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> The award was based on the opinions of Dr. Nicholas Diamond, an attending Board-certified physical medicine and rehabilitation physician, and Dr. Herbert White, Jr., a Board-certified occupational medicine physician serving as an OWCP district medical adviser.

On September 12, 2017 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.

In a December 18, 2017 letter, OWCP's hearing representative notified appellant that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for February 14, 2018 at 2:00 p.m., Eastern Standard Time.<sup>4</sup> The notice of hearing was mailed to appellant's address of record. Appellant did not appear at the appointed time and place.

By decision dated February 26, 2018, OWCP's hearing representative determined that appellant abandoned her request for a telephone hearing. He noted that an oral hearing was scheduled to be conducted by telephone on February 14, 2018 and that appellant received written notification of the hearing 30 days in advance of the hearing. The hearing representative indicated that appellant failed to appear for the hearing and there was no indication in the file that she contacted OWCP either prior or subsequent to the scheduled hearing to explain her failure to appear.

## 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

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> Appellant was provided a toll-free telephone number to call on the date and at the time set for the hearing.

a hearing is sought.<sup>5</sup> 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.<sup>6</sup> OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>7</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. 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.<sup>8</sup>

### ANALYSIS

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

Following OWCP's August 17, 2017 decision granting appellant a schedule award for seven percent permanent impairment of her left upper extremity, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a December 18, 2017 letter, a hearing representative notified her that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for February 14, 2018 at 2:00 p.m., Eastern Standard Time. OWCP properly sent the notice to appellant's address of record.<sup>9</sup> Appellant failed to call in for the scheduled hearing using the provided telephone number. 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. As appellant did not request a postponement, did not call in to the scheduled hearing, and did not provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that she abandoned her request for an oral hearing.<sup>10</sup>

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<sup>5</sup> 20 C.F.R. § 10.616(a).

<sup>6</sup> *Id.* at § 10.617(b).

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

<sup>8</sup> 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).

<sup>9</sup> 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 C.Y.*, Docket No. 18-0263 (issued September 14, 2018). Appellant did not submit evidence contrary to receipt of OWCP's December 18, 2017 hearing notice such that the presumption of receipt would be rebutted.

<sup>10</sup> *See supra* note 8; *see also R.S.*, Docket No. 15-1358 (issued December 4, 2015).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2018 decision of the Office of Workers' Compensation Program is affirmed.

Issued: January 10, 2019  
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