

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 October 27, 2016 appellant, then a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a sprain of her right shoulder over a period of time causally related to factors of her federal employment. She did not stop work. The employing establishment controverted the claim.

By an appeal request form dated and postmarked March 9, 2017 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review. In a February 7, 2018 letter, OWCP's hearing representative notified her that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for March 9, 2018, at 12:30 p.m. Eastern Standard Time (EST). The hearing notice was mailed to appellant's address of record 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 March 21, 2018, OWCP's hearing representative determined that appellant 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.³ 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.⁴ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁵

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

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

⁵ *T.P.*, Docket No. 15-0806 (issued September 11, 2015).

to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁶

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 February 23, 2017 final 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 February 7, 2018 letter, a hearing representative notified her that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for March 9, 2018, at 12:30 p.m., EST. OWCP properly mailed the hearing notice to appellant's last known address.⁷ 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. The Board thus finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.⁸

On appeal appellant argues that she did not abandon her hearing. However, the Board finds that she abandoned the scheduled hearing.

CONCLUSION

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

⁶ 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).

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 called the mailbox rule. *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018). Appellant did not submit evidence of nondelivery of OWCP's February 7, 2018 hearing notice such that the presumption of receipt would be rebutted.

⁸ *See supra* note 6; *see also R.S.*, Docket No. 15-1358 (issued December 4, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2018 decision of the Office of Workers' Compensation Program is affirmed.

Issued: March 1, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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