

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

C.B., Appellant)
and) Docket No. 19-1882
U.S. POSTAL SERVICE, POST OFFICE,) Issued: April 1, 2020
Clementon, NJ, Employer)

)

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 11, 2019 appellant filed a timely appeal from an August 6, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated February 26, 2019, 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 over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On January 10, 2019 appellant, then a 48-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left knee while in the performance of

¹ 5 U.S.C. § 8101 *et seq.*

duty. He explained that, a dog appeared and while he was returning to his truck to avoid it, he stepped on a branch and strained his left knee. On the reverse side of the claim form appellant's supervisor, K.R., contended that appellant's injury was caused by his own misconduct because he failed to follow the employing establishment's safety procedures when approached by the dog. Appellant stopped work on the date of injury.

On the first page of a January 10, 2019 authorization for examination and/or treatment (Form CA-16), K.R. described appellant's injury as a strained left knee and indicated that there was doubt that his injury was sustained in the performance of duty.

In a medical report of even date, Dr. Matthew Wakeley, Board-certified in emergency medicine, evaluated appellant due to the pain in his left knee. Based on a January 10, 2019 x-ray of appellant's left knee that, contained no acute findings, he diagnosed appellant with a left knee sprain and provided him with treatment instructions. In a medical note of even date, Victoria Dykes, a registered nurse, advised that appellant may return to work when cleared by a family physician or specialist.

In a January 14, 2019 order form, Eric Drennen, a physician assistant, ordered a magnetic resonance imaging scan of appellant's left knee and noted an assessment of a rupture of the anterior cruciate ligament (ACL) of the left knee. In a medical note of even date, he recorded a diagnosis of a tendon strain and possible ACL injury. Mr. Drennen checked a box marked "yes" indicating that appellant's injury was causally related to his January 10, 2019 injury. In a January 14, 2019 duty status report (Form CA-17), he diagnosed a left ACL sprain and a left knee sprain and described the January 10, 2019 injury as a possible ACL tear. Mr. Drennen opined that appellant was unable to perform his regular work duties.

In a January 23, 2019 development letter, OWCP noted that it had not received evidence sufficient to support appellant's traumatic injury claim. It advised him of the type of evidence necessary to establish his claim and provided a questionnaire for his completion regarding the circumstances of the January 10, 2019 employment incident. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and a diagnosis, explaining how the alleged work incident caused, contributed to, or aggravated appellant's medical condition. It afforded him 30 days to submit the necessary evidence.

In a January 10, 2019 emergency medical services report, appellant recounted the incident that day in which he was delivering mail and a dog began to chase him. He felt his knee pop when he tripped over a fallen tree branch and fell to the ground.

By decision dated February 26, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the events occurred as described. It explained that he did not provide the requested statements to explain the circumstances surrounding the alleged January 10, 2019 incident.

On March 22, 2019 appellant timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an attached statement, he explained that on January 10, 2019 as he was delivering mail, a big, growling, dog came out of the woods on the

side of the house. Appellant began to slowly walk backwards, toward his truck, with his mailbag in front of him and his spray in hand, when he stepped on a branch and felt a sharp pain in his left leg. The dog eventually ran back into the woods. Appellant reported that he completed two more deliveries before he began to notice that he was having trouble bending his left knee and subsequently called his supervisor to report his injury.

In a June 19, 2019 letter, OWCP notified appellant that a video teleconference hearing was scheduled for July 25, 2019 at 9:00 a.m. Eastern Standard Time (EST). It also provided the address of the video teleconference location. OWCP's hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing.

By decision dated August 6, 2019, OWCP's hearing representative determined that appellant had received a 30-day advance written notice of the hearing scheduled for July 25, 2019 and that he failed to appear. The hearing representative further noted that there was no indication in the record that appellant contacted OWCP prior to the hearing date to request a postponement or provided an explanation to OWCP for his failure to appear at the hearing within 10 days of the scheduled hearing. Consequently, appellant was deemed to have abandoned his request for an oral 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, OWCP's 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

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); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); see also A.J., Docket No. 18-0830 (issued January 10, 2019); L.B., Docket No. 18-0533 (issued August 27, 2018).

ANALYSIS

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

Following OWCP's February 26, 2019 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 19, 2019 letter, OWCP's hearing representative notified appellant that OWCP's Branch of Hearings and Review had scheduled a video teleconference for July 25, 2019 at 9:00 a.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record⁶ and provided instructions on how to participate. There is no evidence of nondelivery of the hearing notice. Appellant, however, failed to appear for the scheduled hearing and he did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing.⁷ The Board thus finds that OWCP properly determined that he abandoned his request for a telephonic hearing.⁸

On appeal appellant explained that the reason he did not appear for the July 25, 2019 hearing was because he could not get the day off from work. As noted above, he received proper notice of the scheduled hearing and did not timely request a postponement of the hearing or provide the basis for his failure to participate within 10 days after the date set for the hearing as was required.⁹ Thus, the Board finds that appellant abandoned his request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.¹⁰

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 known as the mailbox rule. *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

⁷ *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

⁸ *A.J.*, *supra* note 5.

⁹ *Supra* note 7.

¹⁰ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form 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. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board