



In a July 5, 2017 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care at an urgent care facility.

In an undated medical report, Carol E. Engel, a nurse practitioner, noted that appellant was seen in urgent care on July 5, 2017. Appellant reported tripping on a cage at work and falling on her left leg and thigh. She complained of left hip and lower back pain. Ms. Engel diagnosed left hip contusion and lower back pain. In a work progress and status report of even date, she again provided diagnoses of left hip contusion and lower back pain and released appellant to work without restrictions on July 6, 2017. In a July 13, 2017 work progress and status report, Ms. Engel cleared appellant to return to work that same day without restrictions.

In a statement dated December 16, 2018, appellant indicated that she fell at work on July 5, 2017 in the mail hold section. She explained that she was retrieving mail for a customer when her pant leg got caught on a cage that was located in an aisle, causing her to fall on her left side. Appellant immediately reported the incident and was sent to urgent care. She asserted that, while she had been **treating? with her doctor** for a while, the pain and discomfort had not gone away and needed further medical attention.

In a January 14, 2019 letter, the employing establishment controverted appellant's claim.

In a January 28, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical evidence needed including a valid medical diagnosis from a qualified physician. OWCP afforded appellant 30 days to submit appropriate medical evidence. No further evidence was received.

By decision dated February 28, 2019, OWCP found that the medical evidence of record was insufficient to establish a diagnosis in connection with the accepted July 5, 2017 employment incident, noting that a nurse practitioner is not considered a qualified physician. Thus, it found that the requirements had not been met to establish an injury as defined by FECA.

On March 27, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. OWCP also received additional medical evidence, including a progress note signed by Ms. Engel, dated July 5, 2017, noting that appellant complained of low back pain and left hip pain following a fall that day. Appellant underwent x-rays of the pelvis, left hip, and lumbar spine, which revealed no significant abnormalities.

In a May 15, 2019 letter, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for Monday, June 24, 2019 at 3:15 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. OWCP's hearing representative mailed the notice to appellant's last known address of record. Appellant did not make an appearance.

By decision dated July 9, 2019, OWCP's hearing representative determined that appellant had abandoned her request for an oral hearing. The hearing representative indicated that appellant received a 30-day advance written notice of the hearing scheduled for June 24, 2019, and that she failed to appear. OWCP's hearing representative further noted that there was no indication in the record that appellant contacted OWCP prior to the scheduled hearing to request a postponement.

or provide an explanation to OWCP for her failure to appear at the hearing within 10 days of the scheduled 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.<sup>1</sup> 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.<sup>2</sup> OWCP has the burden of proving that it was properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>3</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.<sup>4</sup> 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>5</sup>

### **ANALYSIS**

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

Following OWCP's February 28, 2019 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a May 15, 2019 letter, OWCP's hearing representative notified her that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for June 24, 2019 at 3:15 p.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record<sup>6</sup> and provided instructions on how to participate. 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

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<sup>1</sup> 20 C.F.R. § 10.616(a).

<sup>2</sup> *Id.* at § 10.617(b).

<sup>3</sup> *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463(1991).

<sup>4</sup> *Supra* note 1 at § 10.622(f).

<sup>5</sup> 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).

<sup>6</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 of nondelivery of OWCP's May 15, 2019 hearing notice such that the presumption of receipt would be rebutted.

explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing.<sup>7</sup> The Board thus finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.<sup>8</sup>

On appeal appellant asserted that she was unable to participate in the June 24, 2019 telephonic hearing because the hearing time conflicted with her work schedule. As noted above, she received proper notice of the scheduled hearing and did not timely request a postponement of the hearing or provide the basis for her failure to participate as was required. Thus, the Board finds that appellant abandoned her request for an oral hearing.

### CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative.<sup>9</sup>

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

<sup>8</sup> *A.J.*, *supra* note 5.

<sup>9</sup> 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 July 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2020  
Washington, DC

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

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

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