

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

T.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
El Reno, OK, Employer**

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**Docket No. 19-1952
Issued: April 24, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 14, 2019 appellant filed a timely appeal from a December 26, 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 June 18, 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 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 April 25, 2018 appellant then a 57-year-old rural carrier associate, filed a left-upper extremity injury claim (Form CA-1) alleging that he sustained an injury while in the performance

¹ 5 U.S.C. § 8101 *et seq.*

of duty on March 31, 2018 when he was assigned to a route using his personal vehicle, which required left-handed driving for the entire shift.² He stopped working on April 3, 2018.

In a narrative statement dated April 26, 2018, appellant explained that he previously injured the left radius of his wrist in a slip and fall injury at work on November 20, 2017. He indicated that he underwent surgery, which included the placement of metal plates and 13 screws in his radius and wrist, to repair multiple breaks and a dislocated ulna. Appellant noted that he returned to full-duty work on approximately March 8, 2018. He indicated that on March 31, 2018 he was assigned a route that required using his personal vehicle and left-handed driving throughout his entire work shift. At approximately mid-day appellant felt something pop in his arm. Appellant subsequently went to the physician and upon examination was advised that the bone in his injured arm was still flexible and the metal plate flexed and bent until it failed.

OWCP received an undated witness statement from appellant's supervisor, Postmaster K.K., who indicated that appellant had not mentioned that his wrist was hurting on April 3, 2018. K.K. indicated that appellant notified him on April 5, 2018 that his arm was hurting and he went to the emergency room on April 6, 2018 where he discovered that a metal plate in his arm had been broken.

In a May 14, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional medical evidence needed to establish his claim for a traumatic injury. OWCP afforded appellant 30 days to respond.

In a letter dated May 9, 2018, the employing establishment controverted appellant's claim alleging that he did not have a new injury and that his condition was a continuation of a prior injury to his wrist. It also noted that he had not submitted any medical evidence supporting causal relationship.

A May 31, 2018 witness statement from a coworker, R.M., indicated that on May 28, 2018 at approximately 9:30 a.m. he had observed appellant performing yardwork, but he had not been able to photograph his observation.

In support of his claim, appellant submitted two duty status reports (Form CA-17) dated May 9 and June 6, 2018, physical therapy notes, and state workers' compensation form reports including one signed by Dr. Zak Knutson, a Board-certified orthopedic surgeon, dated May 9, 2018.

By decision dated June 18, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a valid medical diagnosis from a qualified physician in connection with his March 31, 2018 employment injury. It concluded, therefore, that he had failed to establish the medical component of fact of injury.

² Appellant has a previously accepted claim for a November 20, 2017 employment injury, assigned OWCP File No. xxxxx847, which has been accepted for the conditions of left wrist contusion and left-sided fracture of the lower end of the radius initial encounter closed fracture.

Appellant timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review on July 16, 2018.

Appellant further submitted physical therapy notes and medical reports in support of his claim including a Form CA-17 report dated August 15, 2018 and a narrative report dated November 28, 2017 from Dr. Knutson.

In an October 12, 2018 notice, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for December 14, 2018 at 10:00 a.m. Eastern Standard Time (EST). The notice included a toll free number to call and passcode to participate in the telephonic hearing. OWCP instructed appellant to "call the toll free number listed below and when prompted, enter the pass code also listed below." It mailed the notice to his last known address of record. Appellant did not make an appearance and no request for postponement of the hearing was made.

By decision dated December 26, 2018, OWCP's hearing representative found that appellant had failed to appear at the oral hearing and had abandoned his request. The hearing representative indicated that appellant received a 30-day advance notice of the hearing scheduled for December 14, 2018 and found that there was no evidence that he had contacted OWCP either prior to or subsequent to the scheduled hearing to request a postponement or explain his failure to appear.

LEGAL PRECEDENT

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon 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 claims examiner, an OWCP 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 mailed notice of the scheduled hearing to a claimant.⁵ Section 10.622(f) of OWCP regulations provide that 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.⁶ 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. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.⁷ Where it has been determined that a claimant has

³ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

⁴ 20 C.F.R. § 10.617(b).

⁵ A.R., Docket No. 19-1691 (issued February 24, 2020).

⁶ 20 C.F.R. § 10.622(f).

⁷ *Id.*

abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant abandoned the request for a hearing.⁸

ANALYSIS

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

The record establishes that, on October 12, 2018 in response to appellant's timely request for an oral hearing, a representative of OWCP's Branch of Hearings and Review properly mailed a notice of the scheduled telephonic hearing to be held on December 14, 2018 at 10:00 a.m. EST. The hearing notice was mailed to appellant's last known address of record and provided instructions on how to participate. Appellant failed to call in for the scheduled hearing using the provided telephone number. 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. The Board thus finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.⁹

On appeal appellant asserts that he was unable to appear for the December 14, 2018 hearing because he serves as the caregiver for his mother, who suffers from Alzheimer's-like dementia, and circumstances separated him from the materials needed to call and appear at the scheduled hearing. However, there is no evidence of record that he requested a postponement or provided this explanation to OWCP within 10 days of the scheduled hearing.¹⁰ The Board, therefore, 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.¹¹

⁸ *A.J.*, Docket No. 18-0830 (issued January 10, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁹ *Id.*

¹⁰ *See R.S.*, Docket No. 19-1484 (issued January 13, 2020) (where the Board found that appellant had abandoned his request for a May 21, 2019 oral hearing after his mother had been hospitalized on May 9, 2019, because there was no evidence that he had provided this information to OWCP within 10 days of the scheduled hearing).

¹¹ Upon return of the case file OWCP should consider administratively combining the present claim with appellant's accepted left-upper extremity claim in OWCP File No. xxxxx847.

ORDER

IT IS HEREBY ORDERED THAT the December 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 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