

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

_____)	
K.J., Appellant)	
)	
and)	Docket No. 20-0414
)	Issued: July 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Hammond, IN, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 12, 2019 appellant filed a timely appeal from a September 25, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated May 3, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

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

FACTUAL HISTORY

On February 7, 2019 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2019 she injured her back when she fell while in the performance of duty. On February 12, 2019 OWCP accepted her claim for contusion of the lower back and pelvis.

On March 18, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 9 through 15, 2019. By decision dated May 3, 2019, OWCP denied her claim for wage-loss compensation. On May 31, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a July 31, 2019 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for September 12, 2019 at 9:45 a.m. Eastern Standard Time (EST). OWCP instructed her to "call the toll free number listed below and when prompted, [and] enter the pass code also listed below." It mailed the notice to appellant's last known address of record. Appellant did not make an appearance and no request for postponement of the hearing was made.

By decision dated September 25, 2019, OWCP's hearing representative found that appellant had failed to appear at the oral hearing and had abandoned her request. The hearing representative indicated that she had received written notice of the hearing scheduled for September 12, 2019 30 days in advance, and that she failed to appear for the oral hearing. OWCP further found that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either prior to 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 a hearing is sought.³ 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.⁴ OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁵

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

⁵ *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *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).

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.⁶

ANALYSIS

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

The record establishes that, on July 31, 2019, 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 September 12, 2019 at 9:45 a.m., EST. The hearing notice was mailed to appellant's last known address of record and provided instructions for participation. Appellant, however, failed to call in for the scheduled hearing using the provided telephone number and passcode. 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 oral hearing.⁷

On appeal appellant contends that she never received the September 12, 2019 date for the hearing. However, 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.⁸ Appellant did not submit evidence of nondelivery of OWCP's hearing notice such that the presumption of receipt would be rebutted. The Board, therefore, 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.

⁶ 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); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁷ *Id.*

⁸ *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 30, 2020
Washington, DC

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

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

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