

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

V.C., Appellant	)	
	)	
and	)	<b>Docket No. 20-0798</b>
	)	<b>Issued: November 16, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Greensboro, NC, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 28, 2020 appellant filed a timely appeal from a December 31, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated August 14, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 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 had abandoned her request for an oral hearing before an OWCP hearing representative.

## FACTUAL HISTORY

On June 25, 2019 appellant, then a 63-year-old rural carrier, filed a claim for traumatic injury (Form CA-1) alleging that on June 18, 2019 she experienced pain in her left knee when picking up a package while in the performance of duty. She stopped work on June 20, 2019 and returned on June 25, 2019.

Appellant presented to the emergency room on June 21, 2019 and was treated by Megan E. Smith, a physician assistant, who indicated that she could return to work on June 25, 2019.

In a development letter dated July 8, 2019, OWCP advised appellant of the factual and medical deficiencies of her claim. It advised her of the type of evidence required and provided a questionnaire for completion. OWCP afforded her 30 days to submit the necessary evidence. No response was received.

By decision dated August 14, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the events occurred as described. It concluded, therefore, that the requirements had not been met to establish an injury, as defined by FECA.

Appellant was treated by Dr. Sohail N. Bazel, a Board-certified internist, on June 25, 2019 for a left knee injury that occurred when she lifted something heavy at work. He diagnosed acute pain of the left knee and injury of the left knee, subsequent encounter.

On August 19, 2019 Dr. Patrick King, a Board-certified family practitioner, treated appellant for left knee pain, which began on June 18, 2019, after lifting boxes at work. He diagnosed acute pain of the left knee, primary osteoarthritis of the left knee, and chronic midline low back pain with left-sided sciatica. Dr. King administered a left lateral intra-articular knee corticosteroid injection.

On September 16, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an November 15, 2019 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for December 17, 2019 at 11:30 a.m. Eastern Standard Time (EST). OWCP instructed her to "call the toll-free number listed below and when prompted, 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.

OWCP continued to receive evidence. Dr. Lynda Bridges Bialobrzeski, Board-certified in emergency medicine, treated appellant in the emergency room on June 21, 2019 for acute pain of the left knee. An x-ray of the left knee of even date revealed no acute fracture or malalignment, remote healed proximal fibular shaft fracture, small suprapatellar effusion, and mild tricompartmental osteoarthritis.

By decision dated December 31, 2019, OWCP determined that appellant had failed to appear at the oral hearing and, therefore, abandoned her request. It indicated that she had received written notice of the hearing scheduled for December 17, 2019, 30 days in advance, and that she failed to appear for the oral hearing. OWCP further noted 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.<sup>3</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>4</sup> 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.<sup>5</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. 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>6</sup>

### **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 appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review following its August 14, 2019 decision. In a November 15, 2019 letter, a hearing representative notified appellant that it had scheduled a telephonic hearing to be held on December 17, 2019, at 11:30 a.m., EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate, and the notice was not returned as undeliverable. Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to

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<sup>3</sup> *Id.* at § 10.616(a).

<sup>4</sup> *Id.* at § 10.617(b).

<sup>5</sup> *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).

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

have been received by the intended recipient.<sup>7</sup> The presumption is commonly referred to as the “mailbox rule.” It arises when the record reflects that the notice was properly addressed and duly mailed. The current record is devoid of evidence to rebut the presumption that appellant received OWCP’s November 15, 2019 notice of hearing. The hearing notice was properly addressed to appellant’s last known address. Appellant did not call in as instructed for the December 17, 2019 scheduled telephonic hearing and there is no indication that she requested postponement of the telephonic hearing. Moreover, she did not submit a written request within the 10 days after the date set for the telephonic hearing and request that another telephonic hearing be scheduled. Under the circumstances, OWCP’s hearing representative properly found that appellant abandoned her telephonic hearing request.

On appeal appellant contends that she did not abandon her request for a telephone hearing, rather, she had her telephone with her at all times that day waiting for a call from OWCP that she never received. However, for the reasons set forth above, appellant abandoned her request for an oral hearing before an OWCP hearing representative.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 31, 2019 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: November 16, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Claudia J. Whitten*, 52 ECAB 483 (2001).