

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

D.H., Appellant	)	
	)	
and	)	<b>Docket No. 21-0276</b>
	)	<b>Issued: July 16, 2021</b>
	)	
U.S. POSTAL SERVICE, Albuquerque, NM, 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 December 14, 2020 appellant filed a timely appeal from a September 15, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from OWCP's last merit decision, dated April 30, 2020, 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 OWCP received additional evidence following the September 15, 2020 decision. 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 his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

## FACTUAL HISTORY

On March 12, 2020 appellant, then a 61-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2019, he felt a sharp pain in his right knee when training and loading mail while in the performance of duty. On the reverse side of the claim form appellant's supervisor contended that appellant was not at work on December 13, 2019 and that his claim was filed more than 30 days following the date of the alleged injury.

In a development letter dated March 17, 2020, OWCP advised appellant that it did not receive any documentation with his claim form. It requested that he submit a narrative medical report from his attending physician, which included the physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated a diagnosed medical condition. OWCP also attached a questionnaire for his completion. It afforded appellant 30 days to submit the necessary evidence.

In an April 14, 2020 response, appellant alleged that on or about December 13, 2020, as he was training for his new job and loading a machine, which required him to twist 90 degrees, in so doing he felt a sharp pain in his right knee. He explained that he initially believed gout was the cause of his pain, but later learned that the pain was not due to gout as he had incorrectly been diagnosed. Appellant explained that a February 29, 2019 magnetic resonance imaging (MRI) scan confirmed that he had a torn right knee medial meniscus and realized it was attributed to the twisting action of loading mail onto the machine. He stated that his initial injury occurred on or about December 13, 2019, but he may have requested leave on that day due to pain. Appellant also stated that the injury could have occurred December 8, 9, or 13, 2019.

A February 26, 2020 MRI scan diagnosed a tear in the posterior horn and body of the medial meniscus in appellant's right knee.

OWCP received a letter dated April 10, 2020 from Dr. Dennis Garcia, Board-certified in family practice, who indicated that appellant fell at work in October 2019, which possibly resulted in the injury to his right knee. Dr. Garcia diagnosed a posterior horn medial meniscus tear as well as a moderate sized Baker's cyst and tricompartmental arthritis. He also related that appellant could not tolerate any prolonged standing, bending, or twisting and that he would need surgery.

By decision dated April 30, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted December 13, 2019 employment incident.

On May 29, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On July 27, 2020 OWCP's Branch of Hearings and Review informed appellant that his oral hearing was scheduled for August 27, 2020 at 1:00 p.m. Eastern Standard Time (EST). He was instructed to call the toll-free telephone number and enter the passcode provided when prompted. It mailed the notice to his last known address of record. Appellant did not appear for the hearing and no request for postponement of the hearing was made.

By decision dated September 15, 2020, OWCP's hearing representative found that appellant had abandoned his hearing request. The hearing representative indicated that appellant received 30 days' advance notice of the hearing scheduled for August 27, 2020 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**

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 his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

The record establishes that on July 27, 2020, 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 scheduled for August 27, 2020 at 1:00 p.m. EST. The hearing notice was mailed to appellant's last known address of record and provided instructions

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<sup>3</sup> 20 C.F.R. § 10.616(a).

<sup>4</sup> *Id.* at § 10.616(b).

<sup>5</sup> *J.H.*, Docket No. 20-0023 (issued September 16, 2020); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *R.C.*, 59 ECAB 521 (2008).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (September 2020); *J.H.*, *id.*

on how to participate. Appellant failed to call-in for the scheduled telephonic hearing. 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.

**CONCLUSION**

The Board finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2021  
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