

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

_____)	
M.C., Appellant)	
)	
and)	Docket No. 21-0228
)	Issued: June 28, 2021
DEPARTMENT OF VETERANS AFFAIRS, VA)	
NY HARBOR HEALTHCARE SYSTEM,)	
MANHATTAN CAMPUS, New York, NY,)	
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 1, 2020 appellant filed a timely appeal from an October 26, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated May 18, 2020, 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 had abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 9, 2020 appellant, then a 63-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2020 she injured her back when her foot got caught in a chair and she fell on her back while in the performance of duty. She stopped work on March 27, 2020.

In a March 27, 2020 progress report, Dr. David M. Frank, a gastroenterologist, noted that appellant presented with back and neck pain after her foot got caught in a chair and she fell on the floor at work. He conducted a physical examination and diagnosed low back and neck pain.

An x-ray of the lumbar spine of even date revealed multilevel degenerative changes, including osteopenia, at L4-L5 and L5-S1 levels. An x-ray of the cervical spine of even date revealed mild multilevel degenerative changes, including osteopenia.

In a March 27, 2020 duty status report (Form CA-17), an unidentifiable healthcare provider diagnosed cervicgia and low back pain and provided work restrictions.

In an April 1, 2020 letter, Dr. Brett Spain, an osteopath and sports medicine specialist, found that appellant was temporarily disabled from work due to low back pain, lumbar intervertebral disc degeneration, spondylosis, spondylolisthesis, and sprain of ligaments.

In an April 17, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence required and afforded her 30 days to submit the requested medical evidence.

Dr. Spain, in his April 1, 2020 medical report, noted that appellant presented with lower back pain. He reported that she had fallen at work on March 27, 2020 directly on her lower back. Dr. Spain conducted a physical examination and diagnosed back pain, lumbar intervertebral disc degeneration, spondylosis, spondylolisthesis, and sprain of ligaments.

By decision dated May 18, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted March 27, 2020 employment incident.

Appellant subsequently submitted additional medical evidence.

On June 17, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 9, 2020 letter, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for Tuesday, October 13, 2020 at 11:00 a.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 appear at the oral hearing at the scheduled time.

By decision dated October 26, 2020, OWCP's hearing representative determined that appellant had abandoned her request for an oral hearing. She indicated that appellant received a 30-day advanced written notice of the hearing scheduled for October 13, 2020 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 to 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.² 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.³ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁴

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.⁵ 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 a representative of OWCP's Branch of Hearings and Review.

The record establishes that on September 9, 2020, in response to appellant's 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 October 13, 2020 at 11:00 a.m., EST. She mailed the hearing notice 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,

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *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).

⁵ *Supra* note 2 at § 10.622(f).

⁶ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews 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).

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 October 13, 2020 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 she abandoned her request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly determined that appellant had abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2021
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

⁷ *Id.*

⁸ *See E.G.*, Docket No. 20-1184 (issued March 1, 2021); *K.J.*, Docket No. 20-0414 (issued July 30, 2020).