

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

<p>M.C., Appellant</p> <p>and</p> <p>DEPARTMENT OF THE ARMY, U.S. ARMY INSTALLATION COMMAND, JOINT BASE SAN ANTONIO-FORT SAM HOUSTON, TX, Employer</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 21-0351</p> <p>Issued: June 29, 2021</p>
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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 January 4, 2021 appellant filed a timely appeal from a September 18, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated April 21, 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 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 February 5, 2020 appellant, then a 46-year-old protocol specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2020 she injured her left wrist when moving furniture and putting up tables while in the performance of duty. She did not stop work. On the reverse side of the claim form, the employing establishment acknowledged that appellant was in the performance of duty when she was injured.

On February 10, 2020 OWCP received an official copy of appellant's protocol specialist position description and a January 19, 2020 notification of personnel action (Standard Form (SF-50)).

In a March 12, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a February 5, 2020 medical report, Dr. Alex S. Rowland, a Board-certified orthopedic surgeon, noted that appellant injured her left wrist at work after lifting heavy tables. He diagnosed tendinitis of the hand.

In a March 4, 2020 medical report, Dr. Rowland indicated that appellant presented to recheck her left wrist. He reiterated his diagnosis.

By a March 13, 2020 letter, the employing establishment, controverted appellant's claim asserting that the incident did not occur in the performance of duty.

In a March 13, 2020 witness statement, C.H., appellant's coworker, recounted that appellant led the efforts in coordinating and conducting events at work on January 22, 2020. She indicated that employees, including appellant and other staff, were informed that they were not authorized to move any furniture. C.H. also attested that appellant personally informed her and others that they were not authorized to move any furniture.

In an undated witness statement, K.H., appellant's supervisor, asserted that appellant's contract with the employing establishment's resident center explicitly stated that she could not move any furniture and that she was aware of this policy.

In an undated witness statement, R.D., another coworker, alleged that appellant informed her personally, on three occasions, on January 22, 2020 that they were prohibited from moving any furniture.

Appellant also submitted a March 16, 2020 report from James Biasioli, an occupational therapist, who diagnosed tendinitis of the hand, pain of left wrist, and stiffness of left wrist.

By decision dated April 21, 2020, OWCP accepted that the January 22, 2020 incident occurred as alleged and that appellant was diagnosed with a medical condition. However, it denied her claim, finding that she was not in the performance of duty at the time of the alleged January 22, 2020 employment incident. OWCP concluded, therefore, that the requirements had not been met

for establishing that she “sustained an injury and/or medical condition that arose during the course of employment and within the scope of compensable work factors as defined by FECA.”

In a May 4, 2020 statement, appellant again alleged that she was injured on January 22, 2020 while in the performance of duty. She contended that she noticed that someone had moved the furniture during the work-related event. Appellant acknowledged that the furniture was not supposed to be moved and explained that she needed to move it back to its original location. She noted that she injured her wrist when setting up for the welcome reception and putting up tables in order for the reception to start on time.

On an appeal request form postmarked May 6, 2020 and received by OWCP on May 16, 2020 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

In an August 3, 2020 letter, OWCP’s hearing representative notified appellant that a telephonic hearing was scheduled for Tuesday, September 8, 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 make an appearance.

By decision dated September 18, 2020, OWCP determined that appellant had abandoned her request for an oral hearing. It indicated that appellant received a 30-day advance written notice of the hearing scheduled for September 8, 2020 and that she failed to appear. OWCP further noted that there was no indication in the record that appellant contacted it prior to the scheduled hearing to request a postponement or provide an explanation 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

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).

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 August 3, 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 Tuesday, September 8, 2020 at 11:00 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 8, 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 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 *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review 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).

⁷ *Id.*

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

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 29, 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