

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

C.H., Appellant)	
)	
and)	Docket No. 21-0204
)	Issued: November 29, 2021
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL MEDICAL)	
CENTER DEVENS, Ayer, MA, 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 November 20, 2020 appellant filed a timely appeal from a June 30, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated January 27, 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 his request for an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 12, 2019 appellant, then a 40-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on November 22, 2019 he sustained injury when he struck his left elbow and was forced to the ground when attempting to restrain a combative inmate while in the performance of duty. He did not stop work.

In a December 23, 2019 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted reports from health care providers, including: two December 20, 2019 narrative reports and an undated form report from Allison S. Betts, a physician assistant; a December 26, 2019 narrative report and an undated form report from William S. King, a physician assistant; and December 26, 2019 cervical spine x-ray findings.

OWCP also received a January 14, 2020 letter in which a safety compliance specialist for the employing establishment described appellant's reporting of his claimed injury.

By decision dated January 27, 2020, OWCP accepted that on November 22, 2019 appellant was engaged in a struggle at work with a combative inmate, as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish the medical component of fact of injury. OWCP concluded that the requirements had not been met for establishing an injury as defined by FECA.

By appeal form dated February 25, 2020,² appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 12, 2020 letter, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for June 16, 2020 at 2:15 p.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 for the hearing and no request for postponement was made.

By decision dated June 30, 2020, OWCP determined that appellant had abandoned his request for an oral hearing. It further found that there was no indication in the case record that appellant had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to 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

² The case record does not contain the envelope in which the appeal form was mailed.

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 proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁵

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 his request for an oral hearing.

Following OWCP's January 27, 2020 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a May 12, 2020 letter, OWCP's hearing representative notified appellant that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for June 16, 2020 at 2:15 p.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record⁷ and provided instructions on how to participate. There is no evidence of non-delivery of the hearing notice. However, appellant failed to appear for the scheduled hearing and he did not request a postponement or provide an explanation to OWCP for his failure to appear within 10 days of the scheduled hearing.⁸ The Board thus finds that OWCP properly determined that he abandoned his request for an oral hearing.⁹

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

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).

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) (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁷ *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

⁸ *See A.J.*, *supra* note 6.

⁹ *See E.S.*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 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