

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

_____)	
M.S., Appellant)	
)	
and)	Docket No. 22-0362
)	Issued: July 29, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Santa Clarita, CA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 12, 2022 appellant filed a timely appeal from an August 26, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated March 23, 2021, 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 to review 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.

FACTUAL HISTORY

On February 16, 2021 appellant, then a 36-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2021 she sustained a bone

¹ 5 U.S.C. § 8101 *et seq.*

contusion on her right middle finger when her hand became smashed between two casters as she was staging casters on a machine while in the performance of duty.

In support of her claim, appellant submitted reports dated January 16 through February 12, 2021 from Narin Phuong, a physician assistant, Matthew Bonaventure, a certified physician assistant, Jessica Beard, a nurse practitioner, and Dr. Carlos Garrett, a Board-certified internist. These healthcare providers diagnosed contusion of right middle finger without damage to the nail, initial encounter, and addressed appellant's work capacity and restrictions.

OWCP, by development letter dated February 17, 2021, informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed, including a medical report from a qualified physician providing a rationalized medical explanation as to how the reported work incident caused or aggravated a diagnosed medical condition. OWCP afforded appellant 30 days to respond.

OWCP subsequently received additional reports from Ms. Beard and Mr. Bonaventure, who continued to diagnose contusion of right middle finger without damage to the nail, initial encounter, and again addressed appellant's work capacity and restrictions. It also received reports from Coreen E. Fitzgerald, an occupational physical therapist, and Julie D. Moore, a certified occupational therapist assistant, who diagnosed the same condition and noted appellant's work capacity and restrictions.

By decision dated March 23, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis from a qualified physician in connection with the accepted January 16, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP thereafter received additional narrative reports, form reports, and a referral prescription dated February 3 through March 25, 2021 from Ms. Fitzgerald, Mr. Bonaventure, and Dr. Garrett who continued to diagnose right middle finger contusion without damage to the nail, initial encounter, and discussed appellant's work capacity and restrictions.

On April 10, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. She submitted an additional report dated March 25, 2021 from Dr. Garrett and a March 26, 2021 report from Ms. Beard, who restated their diagnosis of right middle finger without damage to the nail, initial encounter, and addressed appellant's work capacity.

OWCP also received reports dated January 30 through April 2, 2021 from Gerardo Cudich, a licensed acupuncturist, Dr. Anne Ngoc-Phuong Pham, a Board-certified family practitioner, and Julie Moore, a certified occupational therapist, who diagnosed right middle finger without damage to the nail, initial encounter, and Mr. Bonaventure, Ms. Fitzgerald, and Dr. Garrett who reiterated their diagnosis of the same condition.

In a July 2, 2021 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for August 11, 2021 at 11:00 a.m. Eastern Standard Time (EST). She provided a toll-free number and passcode for access to the hearing. The hearing representative

mailed the notice to appellant's last known address of record. Appellant failed to appear for the hearing.

By decision dated August 26, 2021, OWCP found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive 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 notice of the scheduled hearing to a claimant and any representative of record.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. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.⁶ Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision, finding that the claimant abandoned the request for a hearing.⁷

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

⁴ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 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).

⁵ 20 C.F.R. § 10.622(f).

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); see also *L.L.* and *V.C.* *supra* note 4; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

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.

Following OWCP's March 23, 2021 decision denying appellant's traumatic injury claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a July 2, 2021 notice, OWCP's Branch of Hearings and Review notified her that it had scheduled a telephonic hearing for August 11, 2021 at 11:00 a.m. EST. OWCP mailed the notice to appellant's last known address of record. The Board has held that, 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 failed to call in for the scheduled hearing at the prescribed time. She did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.⁹

CONCLUSION

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.

⁸ See *L.L., V.C., and L.T.*, *supra* note 4.

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board