



## ISSUE

The issue is whether OWCP properly determined that appellant abandoned his request for an oral hearing.

## FACTUAL HISTORY

On September 13, 2011 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2011 his vehicle was rear ended injuring his neck, lower back, both shoulders, both wrists, and his coccyx while in the performance of duty. He stopped work on September 13, 2011. OWCP accepted the claim for sprain of the neck, contusion of the shoulder and upper arm, and bilateral contusion of the back.<sup>3</sup> Appellant returned to light-duty work on November 1, 2011 and OWCP paid him wage-loss compensation on the supplemental rolls due to medical appointments. He returned to full-time light-duty work on July 18, 2013.

By decision dated May 7, 2014, OWCP granted appellant a schedule award for 12 percent permanent impairment of his right upper extremity (shoulder).

Subsequently, appellant requested an increased schedule award.

After further development, by decision dated August 18, 2021, OWCP denied appellant's claim for an increased schedule award. On September 2, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a December 1, 2021 letter, OWCP's hearing representative notified appellant that he had scheduled a telephonic hearing for January 5, 2022 at 10:00 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode and instructions on how to participate. The 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 January 19, 2022, 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 he 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

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx536. It previously accepted appellant's April 9, 2005 traumatic injury claim for a right wrist sprain under OWCP File No. xxxxxx813. OWCP later accepted a right wrist sprain under OWCP File No. xxxxxx829 due to a May 23, 2006 employment injury. Its File Nos. xxxxxx536, xxxxxx829, and xxxxxx813 have been administratively combined by OWCP, with the latter serving as the master file.

a hearing is sought.<sup>4</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>5</sup> OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>6</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>7</sup>

### ANALYSIS

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

Following OWCP's January 19, 2022 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a December 1, 2021 letter, the hearing representative notified appellant that a telephonic hearing was scheduled for January 5, 2022 at 10:00 a.m. EST. The hearing notice was properly mailed to appellant's last known address of record<sup>8</sup> and included a toll-free number to call and provided the appropriate passcode and instructions on how to participate. There is no evidence of nondelivery 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.<sup>9</sup> The Board, thus, finds that OWCP properly determined that he abandoned his request for an oral hearing.<sup>10</sup>

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<sup>4</sup> 20 C.F.R. § 10.616(a).

<sup>5</sup> *Id.* at § 10.617(b).

<sup>6</sup> *H.C.*, Docket No. 22-0047 (issued May 25, 2022); *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *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).

<sup>7</sup> 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6g (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>8</sup> *H.C.*, *supra* note 6; *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

<sup>9</sup> *See A.J.*, *supra* note 7.

<sup>10</sup> *See E.S.*, *supra* note 8.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed

Issued: September 29, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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