

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

_____)	
L.H., Appellant)	
)	
and)	Docket No. 23-1019
)	Issued: December 26, 2023
U.S. POSTAL SERVICE, SECTION 2 CARRIER)	
ANNEX, BRENTWOOD POST OFFICE,)	
Washington, DC, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 26, 2023 appellant filed a timely appeal from a January 31, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated August 11, 2022, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 31, 2023 nonmerit decision, OWCP and the Board received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

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

FACTUAL HISTORY

On December 17, 2020 appellant, then a 39-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2020 she injured her knees when they gave out while in the performance of duty.³ She stopped work on November 23, 2020. On April 1, 2021 OWCP accepted the claim for a medial meniscus tear of the left knee. It paid appellant wage-loss compensation on the supplemental rolls from February 10 through April 16, 2021.

On May 26, 2022 appellant filed claims for compensation (Form CA-7) for disability from work for the period April 21 through June 11, 2022.⁴

By decision dated August 11, 2022, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work during the claimed period due to the accepted employment condition.⁵

On September 6, 2022 OWCP received a request for an oral hearing before a representative of OWCP's Branch of Hearings and Review relative to OWCP's August 11, 2022 decision. The request was undated, unsigned, and did not contain a home address for appellant.

In a December 13, 2022 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for January 20, 2023 at 8:45 a.m. Eastern Standard Time (EST). The notice provided a toll-free number and appropriate passcode for access to the hearing. The hearing representative mailed the notice to her last known address of record located in Suitland, MD. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated January 31, 2023, OWCP's hearing representative found that appellant had abandoned her request for an oral hearing, because she had received written notification of the hearing 30 days in advance but failed to appear. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or within 10 days after the scheduled hearing to explain her failure to appear.

³ In her Form CA-1, appellant provided a home address located in Suitland, MD.

⁴ Appellant's handwritten May 26 and June 16, 2022 Forms CA-7 provided a home address located in Fort Washington, MD. In a completed Form CA-7 of even date, the employing establishment noted her home address as the same address provided in her Form CA-1.

⁵ The decision was mailed to the address located in Suitland, MD.

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.⁶ 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.⁷ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁸

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.⁹

ANALYSIS

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

Following OWCP's August 11, 2022 decision denying appellant's claim for wage-loss compensation, it received a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a December 13, 2022 notice, OWCP's Branch of Hearings and Review notified appellant that it had scheduled a telephonic hearing for January 20, 2023 at 8:45 a.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.¹⁰ There is no indication that the December 13, 2022 notice was returned as undeliverable. 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.¹¹

⁶ 20 C.F.R. § 10.616(a).

⁷ *Id.* at § 10.617(b).

⁸ *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).

⁹ 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); *J.W.*, Docket No. 22-1094 (issued January 23, 2023); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁰ *J.W.*, Docket No. 22-1094 (issued January 23, 2023); *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

¹¹ *See A.J.*, Docket No. 18-0830 (issued January 10, 2019); *see also R.M.*, Docket No. 14-1512 (issued October 15, 2014); *V.M.*, Docket No. 06-0403 (issued December 15, 2006).

As appellant failed to call in to the scheduled hearing and failed to request a postponement or explain her failure to appear in writing within 10 days of the scheduled hearing, the Board finds that she abandoned her request for an oral hearing.¹²

On appeal appellant contends that she updated her address prior to submitting her September 6, 2022 request for an oral hearing, and that her current address was located in Fort Washington, MD. As noted above, OWCP's August 11, 2022 decision was mailed to appellant's last known address located in Suitland, MD, and her September 6, 2022 request for an oral hearing was unsigned, undated, and did not reflect an address. Although she provided an address in Fort Washington, MD, in her May 26, 2022 Form CA-7, the document submitted to OWCP by the employing establishment reflected an address in Suitland, MD. If a claimant changes his or her address, the onus is on the claimant to notify OWCP of this change in writing.¹³ There is no evidence in the record that appellant provided OWCP written notification of her change of address prior to the issuance of the December 13, 2022 notice. Thus, without evidence to the contrary, appellant is presumed to have received the December 13, 2022 notice.¹⁴

CONCLUSION

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

¹² *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).

¹³ *E.C.*, Docket No. 20-0578 (issued September 4, 2020); *M.P.*, Docket No. 17-0046 (issued June 9, 2017); *see generally J.R.*, Docket No. 13-1946 (issued January 7, 2014). In *J.R.*, the Board found that OWCP properly determined that the claimant failed to establish nonreceipt of a notice which OWCP sent him because he had not advised OWCP of a change of address in writing prior to the time OWCP sent him the notice. Appellant had asserted that he advised his vocational rehabilitation counselor of a change of address in connection with his participation in an OWCP-sponsored vocational rehabilitation program.

¹⁴ *E.C.*, Docket No. 20-0578 (issued September 4, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 26, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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