

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because he did not abandon his request for a telephonic hearing. The Board, in exercising its discretion, denies appellant's request for oral argument because the Board does not have jurisdiction over the merits of this case and, thus, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to consider the merits of this case.³

ISSUE

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

FACTUAL HISTORY

On January 23, 2020 appellant, then a 41-year-old truck driver, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2020 he experienced back pain when a supervisor forced him to push and load an all-purpose container cage that was overfilled with Priority Mail. He stopped work on January 17, 2020.

OWCP, by decision dated March 12, 2020, denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted January 16, 2020 employment incident. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On April 7, 2020 appellant requested a review of the written record or a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the March 12, 2020 denial decision. He submitted additional evidence in support of his claim.

In a July 9, 2020 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone and was scheduled for August 27, 2020 at 2:15 p.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 did not appear for the telephonic hearing at the appointed time.

By decision dated September 8, 2020, OWCP found that appellant had abandoned his request for an oral hearing as he 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 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

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

² 5 U.S.C. § 8101 *et seq.*

³ Following the issuance of the September 8, 2020 decision, OWCP received additional evidence. However, 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.*

decision within 30 days of the date of the decision for which a hearing is sought.⁴ 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.⁵ OWCP has the burden of proving that it properly mailed said notice to a claimant and any representative of record.⁶

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.⁷ 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.⁸

ANALYSIS

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

Following OWCP's March 12, 2020 decision denying the claim, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a July 9, 2020 notice, OWCP's hearing representative notified him that it had scheduled a telephonic hearing for August 27, 2020 at 2:15 p.m. EST. She 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.⁹ Appellant failed to call in for the scheduled hearing at the prescribed time. He 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 he abandoned his request for an oral hearing.¹⁰

⁴ 20 C.F.R. § 10.616(a).

⁵ *Id.* at § 10.617(b).

⁶ *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).

⁷ 20 C.F.R. § 10.622(f).

⁸ 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 6; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

⁹ *See L.L., V.C., and L.T., supra* note 6.

¹⁰ *Id.*

On appeal, appellant contends that he did not abandon his request for a telephonic hearing. He asserts that he called into the hearing and a recording indicated that he was the first caller. Appellant further asserts that, while he was waiting for OWCP to arrive at the hearing, he was disconnected from the call. The case record establishes, however, that he did not advise OWCP in writing of these circumstances within 10 days after the date set for the hearing.¹¹ Thus, OWCP properly determined that appellant abandoned his request for an oral hearing.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ See *B.B.*, Docket No. 18-1084 (issued November 16, 2018); *C.M.*, Docket No. 16-0412 (issued September 25, 2017).