

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

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<b>J.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-1094</b>
	)	<b>Issued: January 23, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS HEALTH ADMINISTRATION,</b>	)	
<b>Philadelphia, PA, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. McGINLEY, Alternate Judge

**JURISDICTION**

On July 15, 2022 appellant filed a timely appeal from a January 24, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 2, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 his request for an oral hearing.

**FACTUAL HISTORY**

On June 26, 2020 appellant, then a 54-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2020 he contracted COVID-19 when working with COVID-19

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

positive patients during a severe outbreak while in the performance of duty. By decision dated July 23, 2020, OWCP accepted appellant's claim for COVID-19.

By decision dated February 2, 2021, OWCP denied appellant's claim for continuation of pay (COP), finding that he failed to report the accepted April 27, 2020 employment injury on a form approved by OWCP within 30 days, as required. It further noted that the decision did not affect appellant's entitlement to other disability benefits or compensation for wage loss due to the accepted April 27, 2020 employment injury.

On February 26, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a December 10, 2021 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for January 14, 2022 at 9:30 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 his last known address of record. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated January 24, 2022, OWCP's hearing representative 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 found that there was no indication in the case record that he had contacted the Branch of Hearings and Review either prior to or within 10 days after 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 a hearing is sought.<sup>2</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>3</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>4</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

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<sup>2</sup> 20 C.F.R. § 10.616(a).

<sup>3</sup> *Id.* at § 10.617(b).

<sup>4</sup> *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*, 42ECAB 463 (1991).

to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.<sup>5</sup>

### ANALYSIS

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

Following OWCP's February 2, 2021 decision denying appellant's request for COP, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a December 10, 2021 notice, OWCP's Branch of Hearings and Review notified him that it had scheduled a telephonic hearing for January 14, 2022 at 9:30 a.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.<sup>6</sup> 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.<sup>7</sup> As appellant failed to call in to the scheduled hearing and failed to request a postponement or explain his failure to appear in writing within 10 days of the scheduled hearing, the Board finds he abandoned his request for an oral hearing.<sup>8</sup>

### CONCLUSION

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

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<sup>5</sup> 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>6</sup> *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

<sup>7</sup> *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *L.T.*, Docket No. 20-1539 (issued August 2, 2021).

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2023  
Washington, DC

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

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

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