

FACTUAL HISTORY

On November 18, 2021 appellant, then a 52-year-old federal air marshal, filed an occupational disease claim (Form CA-2) alleging hearing loss due to hazardous noise exposure in his federal employment, including firearms training, jet engine noise, and exposure to pressurization and depressurization of aircraft up to 5 days per week. He noted that he first became aware of his condition and realized its relation to his federal employment on November 11, 2021. Appellant was last exposed to conditions alleged to have caused his hearing loss on November 16, 2021.

By decision dated May 11, 2022, OWCP accepted appellant's claim for bilateral tinnitus due to employment-related noise exposure. It did not authorize hearing aids as the medical evidence of record did not establish that he required hearing aids. OWCP indicated that appellant's case had been forwarded to an OWCP district medical adviser to determine the extent of appellant's hearing loss and any permanent impairment due to his employment-related noise exposure.

By decision dated May 19, 2022, OWCP denied appellant's claim for a schedule award, finding that the evidence of record was insufficient to establish that his accepted bilateral tinnitus condition was severe enough to be considered ratable as there was no evidence of occupational, noise-induced hearing loss.

On June 8, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 16, 2022 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for October 5, 2022 at 1:30 p.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 appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated October 21, 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.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

² 20 C.F.R. § 10.616(a).

representative at least 30 days before the scheduled date.³ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.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. 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.⁵

ANALYSIS

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

Following OWCP's May 19, 2022 decision denying appellant's claim for a schedule award, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an August 16, 2022 notice, OWCP's Branch of Hearings and Review notified him that it had scheduled a telephonic hearing for October 5, 2022 at 1:30 p.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.⁶ 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.⁷

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 that he abandoned his request for an oral hearing.⁸

CONCLUSION

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

³ *Id.* at § 10.617(b).

⁴ *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).

⁵ 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).

⁶ *J.W.*, *id.*; *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

⁷ *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).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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