



acknowledged that appellant was in the performance of duty when he contracted COVID-19. He stopped work on December 23, 2021 and returned to work on January 7, 2022.

On February 15, 2022 the employing establishment controverted continuation of pay (COP) asserting that the injury was not reported on a form approved by OWCP within 30 days of the injury.

By decision dated February 22, 2022, OWCP denied appellant's claim for COP, finding that he had not reported the December 23, 2021 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that the decision affected only his entitlement to COP and did not affect his entitlement to other compensation benefits.

In a statement dated March 2, 2022, K.B., a nurse manager, confirmed that appellant was exposed to COVID-19 on or around December 23, 2021, and lost five days of work for a total of 56 hours due to his illness.

On March 17, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an April 20, 2022 notice, OWCP's hearing representative informed appellant that his oral hearing was scheduled for June 1, 2022 at 10:20 a.m. Eastern Standard Time (EST). She provided a toll-free number and pass code for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant neither appeared for the telephonic hearing, nor requested postponement of the hearing.

By decision dated June 22, 2022, OWCP's hearing representative found that appellant had abandoned his request for an oral hearing as he had received written notice of the hearing 30 days in advance but failed to appear. She 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**

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 proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>4</sup>

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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> *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).

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 a 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 before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's February 22, 2022 decision denying the claim for COP, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an April 20, 2022 letter, OWCP's hearing representative notified him that she had scheduled a telephonic hearing for June 1, 2022 at 10:20 a.m., EST. She mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate. However, appellant failed to call in for the scheduled hearing and did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing.<sup>6</sup> The Board thus finds that OWCP properly determined that appellant abandoned his request for an oral hearing.<sup>7</sup>

On appeal appellant contends that he did not receive the April 20, 2022 letter before the scheduled hearing on June 1, 2022. However, 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>8</sup> There is no evidence in the record of nondelivery of OWCP's hearing notice, such that the presumption of receipt would be rebutted.

### CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

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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 2.1601.6g (October 2011); 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> *Supra* note 5.

<sup>8</sup> *See* C.Y., Docket No. 18-0263 (issued September 14, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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