

FACTUAL HISTORY

On July 16, 2021 appellant, then a 34-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2021 he sustained a left wrist injury when he slipped on ice and landed on his left wrist while in the performance of duty. He stopped work on June 8, 2021.

Appellant submitted a report, memorializing a June 5, 2021 clinic visit, which contained an illegible signature. The report contained recommended work restrictions.

In a July 27, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a March 19, 2021 attending physician's report (Form CA-20) from Douglas Strop, a physician assistant, who referenced a February 16, 2021 fall at work and diagnosed wrist sprain.

In an August 12, 2021 narrative report, Dr. Andrew Barker, a Board-certified physiatrist and osteopath, diagnosed left wrist strain and indicated that appellant was not working. In a duty status report (Form CA-17) of even date, he diagnosed left wrist sprain and recommended work restrictions.

Appellant also submitted a portion of an unsigned report that contained a diagnosis of left wrist sprain.

By decision dated August 30, 2021, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that the employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 29, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He submitted additional evidence, including June 29 and July 15, 2021 CA-17 forms and work capacity reports from Dr. Barker, as well as copies of previously-submitted medical reports. In a February 16, 2021 statement, appellant described the February 16, 2021 fall. He also submitted an October 3, 2021 statement from a coworker who recounted events occurring after the claimed February 16, 2021 fall.

In a November 15, 2021 notice, OWCP's hearing representative informed appellant that a telephonic hearing was scheduled for January 4, 2022 at 2:00 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call, provided the appropriate passcode, and described procedures for requesting postponement of the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing or request postponement.

By decision dated January 20, 2022, OWCP determined 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 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.³ 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.⁴ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.⁵

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.⁶

ANALYSIS

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

Following OWCP's August 30, 2021 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a November 15, 2021 notice, OWCP's hearing representative notified him that it had scheduled a telephonic hearing for January 4, 2022 at 2:00 p.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record⁷ and provided instructions on how to participate. 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.⁸ As of the date of the decision on appeal, there was no evidence of nondelivery of the hearing notice. Appellant failed to appear for the scheduled hearing and he did not request a postponement or provide an explanation to OWCP for his failure to appear within 10 days of the

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

⁵ *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).

⁶ 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 (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁷ *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

⁸ *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).

scheduled hearing.⁹ The Board thus finds that OWCP properly determined that he abandoned his request for an oral hearing.¹⁰

On appeal, appellant contends that he did not receive the notice of hearing. However, as explained above, as of the date of the decision on appeal, there was no evidence of nondelivery. As appellant neither appeared for, nor requested a postponement of the scheduled hearing, OWCP, in its January 20, 2022 decision, properly determined that he abandoned his hearing request.¹¹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2023
Washington, DC

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

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

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

⁹ See *A.J.*, *supra* note 6.

¹⁰ See *E.S.*, *supra* note 7.

¹¹ 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 an appeal." 20 C.F.R. § 501.2(c)(1).