

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

E.G., Appellant)

and)

DEPARTMENT OF COMMERCE, BUREAU)
OF THE CENSUS, Milwaukee, WI, Employer)
_____)

**Docket No. 22-1146
Issued: March 3, 2023**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 19, 2022¹ appellant filed a timely appeal from a January 24, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days has elapsed from OWCP's last merit decision, dated August 16, 2021, to the filing of this appeal,

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's January 24, 2022 decision was July 23, 2022. Since using July 25, 2022, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 19, 2022, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² Appellant submitted a timely request for 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 her oral argument request, appellant asserted that oral argument should be granted because it would provide her an opportunity to explain how physical and psychological conditions prevented her from attending a scheduled OWCP hearing. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On July 8, 2021 appellant, then a 60-year-old census worker, filed a traumatic injury claim (Form CA-1) alleging that at 6:51 p.m. on August 8, 2020 she sustained injury when her vehicle was rear-ended by another vehicle while in the performance of duty. She did not stop work.

Appellant submitted an August 8, 2020 motor vehicle crash report, documentation regarding her work hours, and an employee claim for loss or damage to personal property form dated July 9, 2021 that provided further details regarding her claimed employment incident. She also submitted reports of healthcare providers from her visit to an emergency room on August 8, 2020.

In a July 12, 2021 letter, the employing establishment challenged appellant's claim for an August 8, 2020 employment incident. It asserted that appellant was not performing census duties at the time of the claimed injury and, therefore, was not in the performance of duty.

In a July 15, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional evidence from the employment establishment. It afforded both parties 30 days to respond.

Appellant submitted a July 28, 2021 response to the provided questionnaire and resubmitted several administrative documents and reports from healthcare providers. The employing establishment submitted an August 6, 2021 statement in which it further explained its challenge of appellant's claim.

By decision dated August 16, 2021, OWCP denied appellant's claim for an August 8, 2020 injury, finding that she had not established the factual component of fact of injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 9, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a December 6, 2021 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for January 11, 2022 at 11:30 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode for

³ 5 U.S.C. § 8101 *et seq.*

access to the hearing, 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 make a request for postponement.

By decision dated January 24, 2022, OWCP determined that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance, but failed to appear. It found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain her 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.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 to a claimant and any representative of record a notice of a scheduled hearing.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. 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.⁷

ANALYSIS

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

Following OWCP's August 16, 2021 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a December 6, 2021 notice, OWCP's hearing representative notified appellant that OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for January 11, 2022 at 11:30 a.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of

⁴ 20 C.F.R. § 10.616(a).

⁵ *Id.* at § 10.617(b).

⁶ *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).

⁷ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews 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).

record⁸ and provided instructions on how to participate. There is no evidence of nondelivery of the hearing notice. 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 As appellant failed to appear for the scheduled hearing and did not request a postponement or provide an explanation to OWCP for her failure to appear within 10 days of the scheduled hearing the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.¹⁰

CONCLUSION

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

ORDER

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

Issued: March 3, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁸ *See E.S.*, Docket No. 19-0567 (issued August 5, 2019).

⁹ *LL.*, 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).

¹⁰ *See E.S.*, *supra* note 8.