

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

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<b>T.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0202</b>
	)	<b>Issued: May 16, 2023</b>
<b>U.S. POSTAL SERVICE, INDIANAPOLIS POST</b>	)	
<b>OFFICE, Indianapolis, IN, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 22, 2022 appellant filed a timely appeal from an October 3, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated March 25, 2022, 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 her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

**FACTUAL HISTORY**

On February 10, 2022 appellant, then a 57-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right foot injury due

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

factors of her federal employment including operating a broken gas pedal. She noted that she first became aware of the condition and its relation to her federal employment on February 3, 2022.<sup>2</sup>

In a development letter dated February 10, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding her claim.

In a report dated February 7, 2022, Dr. Brian T. Tamitz, a Board-certified podiatric surgeon, related that appellant was seen for right lateral foot pain. Appellant reported a history of shocking pain in her foot while delivering parcels and walking on uneven surfaces. She indicated that walking increased the pain. Dr. Tamitz diagnosed nondisplaced fracture of the fifth metatarsal bone of the right foot (S92.354A). In an undated work status note, he indicated a diagnosis of nondisplaced fracture of the fifth metatarsal bone of the right foot (S92.354A). Dr. Tamitz placed appellant off work.

Appellant submitted a narrative statement dated February 2, 2022, in which she explained that she broke her foot in November 2021. She was released back to work in December 2021. Appellant indicated that she experienced pain on February 3, 2022 when pressing down on the gas pedal in her vehicle.

Appellant submitted an additional narrative statement dated February 22, 2022. She related that she had reinjured her foot while delivering mail during a snowstorm.

In a letter dated March 10, 2022, the employing establishment controverted appellant's claim, contending that she did not provide clear evidence of a new break of the fifth metatarsal bone in her right foot.

By decision dated March 25, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 23, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 15, 2022 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for September 23, 2022 at 11:15 a.m. Eastern Standard Time (EST). She provided appellant with a toll-free telephone number and appropriate passcode to access the

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<sup>2</sup> Appellant filed a notice of traumatic injury (Form CA-1) on November 19, 2021 alleging that she had sustained a right foot fracture on November 12, 2021 when she struck her foot on landscaping rocks and her foot rolled, while in the performance of duty. OWCP assigned File No. xxxxxx018. After initial denial of the claim, by decision dated December 2, 2022, an OWCP hearing representative remanded the case for further development. OWCP File Nos. xxxxxx073 and xxxxxx018 have been administratively combined, with the latter serving as the master file.

hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant, however, failed to appear for the hearing.

By decision dated October 3, 2022, OWCP found 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 further noted that there was no indication in the record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her failure to appear.

### **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive 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>3</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>4</sup> OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.<sup>5</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.<sup>6</sup> 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, where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.<sup>7</sup> Where it has been determined that, a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision, finding that the claimant abandoned the request for a hearing.<sup>8</sup>

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<sup>3</sup> 20 C.F.R. § 10.616(a).

<sup>4</sup> *Id.* at § 10.617(b).

<sup>5</sup> *W.R.*, Docket No. 22-1016 (issued September 30, 2022); *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *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); *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).

<sup>6</sup> 20 C.F.R. § 10.622(f).

<sup>7</sup> *Id.*

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also M.S.*, and *L.L.*, *supra* note 5; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

### 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 March 25, 2022 decision denying appellant's traumatic injury claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an August 15, 2022 notice, OWCP's hearing representative notified appellant that she had scheduled a telephonic hearing for September 23, 2022 at 11:15 a.m. EST. She mailed the notice to appellant's last known address of record. 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 known as the mailbox rule.<sup>9</sup>

Appellant, however, failed to call in for the scheduled hearing at the prescribed time. She did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.<sup>10</sup>

### 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.

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<sup>9</sup> See *M.S., L.L., and V.C.*, *supra* note 5.

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2023  
Washington, DC

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

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

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