

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

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A.S., Appellant)	
)	
and)	Docket No. 23-0947
)	Issued: November 22, 2023
U.S. DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTIONAL INSTITUTION, TERMINAL)	
ISLAND, San Pedro, CA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 29, 2023 appellant filed a timely appeal from an April 19, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision on this issue, dated October 17, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence to the Board on appeal. However, the Board's *Rules of Procedure* provide: 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 appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

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

FACTUAL HISTORY

On June 30, 1999 appellant, then a 39-year-old physician assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 1999 he sustained right wrist sprain when opening a door while in the performance of duty. OWCP accepted the claim, under OWCP File No. xxxxxx694, for right wrist strain, closed dislocation of the wrist, open fracture of the lunate bone of the wrist, right carpal tunnel syndrome, and a lesion of the right ulnar nerve.³

On September 2, 2022 OWCP proposed termination of appellant's wage-loss compensation, as the weight of the medical evidence established that he no longer had continuing disability from work causally related to his accepted conditions.

By decision dated October 17, 2022, OWCP finalized its proposed termination of appellant's wage-loss compensation.

On November 9, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the October 17, 2022 termination decision. He submitted additional medical evidence in support of his claim.

In a March 6, 2023 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, and was scheduled for April 6, 2023 at noon Eastern Standard Time (EST). The hearing representative provided a toll-free number and passcode for access to the hearing and mailed the notice to appellant's last known address of record. Appellant did not appear for the telephonic hearing at the appointed time, and no request for postponement was made.

By decision dated April 19, 2023, OWCP 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 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 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.⁴ Unless otherwise directed

³ On December 18, 2002 under OWCP File No. xxxxxx939, OWCP accepted temporary aggravation of right wrist strain related to a slip and fall while in the performance of duty on June 28, 2002. It has administratively combined the two OWCP files with OWCP File No. xxxxxx694 serving as the master file.

⁴ 20 C.F.R. § 10.616(a).

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 notice of the scheduled hearing to a claimant and any representative of record.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.⁷ 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.⁸

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 October 17, 2022 decision terminating appellant's wage-loss compensation, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a March 6, 2023 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone and was scheduled for April 6, 2023 at noon EST. The hearing representative mailed the notice to appellant's last known address of record 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.⁹

Appellant failed to call in for the scheduled hearing at the prescribed time. He 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 for the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining failure to appear, the Board finds that OWCP properly determined that he abandoned his request for an oral hearing.¹⁰

⁵ *Id.* at § 10.617(b).

⁶ *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).

⁷ 20 C.F.R. § 10.622(f).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); see also *L.L.* and *V.C.*, *supra* note 6; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

⁹ See *L.L.*, *V.C.*, and *L.T.*, *supra* note 6.

¹⁰ *Id.*

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.

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2023
Washington, DC

Alec J. Koromilas, 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