

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

L.P., Appellant)	
)	
and)	Docket No. 24-0207
)	Issued: April 25, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
IMMIGRATION & CUSTOMS)	
ENFORCEMENT, New York, NY, Employer)	
)	

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 December 22, 2023 appellant filed a timely appeal from a November 24, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated June 20, 2023, 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 over the merits of this case.

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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 6, 2023 appellant, then a 48-year-old general inspector, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2023 he sustained an injury when he was involved in a motor vehicle accident (MVA) while in the performance of duty. He explained that, at the time of the accident, “there was no injury,” but he sought medical treatment and was instructed to take two days off for rest. Appellant stopped work on April 3, 2023 and returned to full duty on April 6, 2023.

In a work excuse note dated April 3, 2023, Trusha Patel, a nurse practitioner, indicated that appellant was evaluated on that date and requested that he be excused from work until April 5, 2023 due to an MVA.

Appellant submitted a police accident report dated April 3, 2023.

In an April 10, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

Appellant submitted a signed April 6, 2023 authorization for examination and/or treatment (Form CA-16) by the employing establishment. In Part B of the Form CA-16 attending physician’s report, Ms. Patel described that on April 3, 2023 he was involved in an MVA. She noted examination findings of mild soreness and diagnosed “evaluation s/p MVC.” Ms. Patel checked a box marked “Yes” indicating that appellant’s condition was caused or aggravated by the described employment incident.

In an undated letter, Dr. Ethan Ben-Sorek, a Board-certified internist, indicated that he concurred with the visit and time off from the visit on April 3, 2023.

In a June 2, 2023 letter, Ms. Patel requested that OWCP add ICD code M79.651, pain in right thigh, to appellant’s visit on April 3, 2023. She noted that he was complaining of thigh pain.

By decision dated June 20, 2023, OWCP accepted that the April 3, 2023 employment incident occurred as alleged. However, it denied appellant’s claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted April 3, 2023 employment incident. Therefore, OWCP concluded that he had not met the requirements to establish an injury as defined by FECA.

On July 18, 2023 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

In a letter dated July 18, 2023, appellant noted that he was appealing the denial of his claim. He explained that he was involved in an MVA on April 3, 2023 and had no serious injuries, except for some pain to his left leg. Appellant reported that he was seen that day by a nurse practitioner for medical screening and was advised to take a couple of days off from work. He also submitted photographs of the MVA.

Appellant submitted an office visit note dated April 3, 2023, by Ms. Patel, who indicated that he was evaluated for follow up after an MVA a couple of hours ago. Ms. Patel provided examination findings and diagnosed “motor vehicle collision, initial encounter.”

In a September 21, 2023 notice, OWCP’s hearing representative informed appellant that he had scheduled a telephonic hearing for November 6, 2023 at 2:30 p.m. Eastern Standard Time (EST). The notice provided a toll-free telephone number and appropriate passcode for access to the hearing. OWCP’s hearing representative mailed the notice to appellant at his last known address of record.² The appellant did not appear.

By decision dated November 24, 2023, OWCP found that appellant had abandoned his request for an oral hearing. It determined that he had failed to appear at the telephonic hearing scheduled for November 6, 2023 and had failed to contact OWCP either before or within 10 days after the scheduled hearing to request a postponement or 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 to a claimant and any representative of record a notice of a scheduled hearing.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

² In a memorandum of telephone call (Form CA-110), dated October 12, 2023, appellant left a voicemail informing OWCP that he received the hearing notice, but that his address was incomplete. In a Form CA-110, dated October 13, 2023, an OWCP claims examiner informed appellant that he needed to change his address in writing.

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

⁵ *C.H.*, Docket No. 21-0024 (issued November 29, 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).

⁶ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also 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 his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's June 20, 2023 decision denying appellant's traumatic injury claim, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a September 21, 2023 notice, OWCP's hearing representative notified appellant that he had scheduled a telephonic hearing for November 6, 2023 at 2:30 p.m. EST. The hearing notice was properly mailed 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.⁷ Appellant failed to appear for the scheduled hearing and failed to request another hearing within 10 days of the scheduled hearing. The Board, therefore, finds that he abandoned his request for an oral hearing.⁸

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.

⁷ *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).

⁸ *See L.H.*, Docket No. 23-1019 (issued December 26, 2023); *J.L.*, Docket No. 22-0454 (issued December 7, 2023).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2023 decision of the Office of Workers' Compensation Programs is affirmed.⁹

Issued: April 25, 2024
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

⁹ The record contains a Form CA-16 signed by the employing establishment official on April 6, 2023. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).