

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

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C.B., Appellant	)	
	)	
and	)	<b>Docket No. 23-1175</b>
	)	<b>Issued: February 5, 2024</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Minneapolis, MN, Employer	)	
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*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  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 18, 2023 appellant filed a timely appeal from an August 25, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 2, 2023, 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 his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

**FACTUAL HISTORY**

On December 20, 2022 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2022 he sustained a dog bite on his right

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

forearm while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. OWCP accepted the claim for open bite of right forearm. Appellant indicated on the Form CA-1 that he was claiming continuation of pay (COP).

By decision dated February 2, 2023, OWCP denied his claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted November 6, 2022 employment injury. It noted that the denial of COP did not affect appellant's entitlement to other compensation benefits.

On February 15, 2023 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant advised OWCP of his new address in Hutchinson, MN on April 13, 2023.

In a June 16, 2023 notice, OWCP's hearing representative informed appellant that an oral hearing regarding his claim for COP was scheduled for August 10, 2023 at 11:00 a.m. Eastern Standard Time (EST). Appellant was provided with a toll-free telephone number and appropriate passcode for access to the 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 August 25, 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 after 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.<sup>2</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>3</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>4</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

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<sup>2</sup> 20 C.F.R. § 10.616(a).

<sup>3</sup> *Id.* at § 10.617(b).

<sup>4</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).

failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>5</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>6</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>7</sup>

### 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 February 2, 2023 decision denying appellant's claim for COP, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 16, 2023 notice, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for August 10, 2023 at 11:00 a.m. EST. A notice was mailed 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 called the mailbox rule.<sup>8</sup>

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 to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining his failure to appear, the Board finds that OWCP properly determined that he abandoned his request for an oral hearing.<sup>9</sup>

### 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.

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<sup>5</sup> 20 C.F.R. § 10.622(f).

<sup>6</sup> *Id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (February 2022); *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

<sup>8</sup> *L.L.*, *supra* note 4; *V.C.*, *supra* note 4; *L.T.*, *supra* note 4.

<sup>9</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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