

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

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H.D., Appellant)	
)	
and)	Docket No. 24-0016
)	Issued: February 7, 2024
U.S. POSTAL SERVICE, OXON HILL POST OFFICE, Oxon Hill, MD, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 6, 2023 appellant, through his representative, filed a timely appeal from an August 1, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed from the last merit decision, dated January 10, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

¹ 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 his oral argument request, appellant stated that his physician was willing to testify for him if OWCP did not understand the merits of his case. The Board, in exercising its discretion, denies his request for oral argument because the issue presented of denial of hearing is not a medical issue. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on a review of the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

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 August 24, 2020 appellant, then a 43-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2020 he injured his left knee when he fell and pulled a muscle in his left leg while in the performance of duty.

By decision dated October 8, 2020, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient medical evidence to establish causal relationship between his diagnosed left knee conditions and the accepted August 13, 2020 employment incident. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On October 22, 2020 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review regarding the October 8, 2020 decision. He submitted additional evidence in support of his claim.

By decision dated September 27, 2022, OWCP completed a preliminary review of the case file and determined that the case was not in posture for a review of the written record at that time. The hearing representative found that while OWCP advised that only medical evidence was necessary to support appellant's claim, appellant had not established the factual basis of his claim. The hearing representative vacated the October 8, 2020 decision and remanded the claim for a *de novo* decision.

On remand, OWCP issued a development letter dated October 13, 2022. It advised that appellant had not established the factual or medical aspects of his claim. OWCP further advised him of the type of factual and medical evidence needed and provided a factual development questionnaire for his completion. It afforded appellant 30 days to submit the requested evidence and return a completed questionnaire. No evidence was received.

By *de novo* decision dated January 10, 2023, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient factual evidence to establish that the August 13, 2020 employment incident occurred as described.

On January 25, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the January 10, 2023 decision.

On June 13, 2023 OWCP's hearing representative notified appellant that an oral hearing was scheduled for July 19, 2023 at 9:15 a.m. Eastern Daylight Time (EDT). The hearing representative provided the toll-free number and passcode to access the hearing. A copy of the notice was mailed to appellant at his last known address of record. Appellant did not appear for the telephonic hearing, nor did he request postponement or explain his failure to appear.

By decision dated August 1, 2023, OWCP found that appellant had abandoned his request for an oral hearing because 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.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 said notice to a claimant and any representative of record.⁵

A claimant who fails to appear for 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.⁶ 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 his request for an oral hearing.

Following OWCP's January 10, 2023 decision denying the claim, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 13, 2023 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, and was scheduled for July 19, 2023 at 9:15 a.m. EDT. The hearing representative 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 called the mailbox rule.⁸

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

⁵ *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).

⁶ 20 C.F.R. § 10.622(f).

⁷ 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).

⁸ *See L.L.*, *V.C.*, and *L.T.*, *supra* note 6.

Appellant failed to call-in for the scheduled hearing at the prescribed time. He also 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. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.⁹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2024
Washington, DC

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

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

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

⁹ *Id.*