

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

C.A., Appellant)	
)	
and)	Docket No. 23-0812
)	Issued: January 17, 2024
U.S. POSTAL SERVICE, MOUNT VERNON)	
POST OFFICE, Mount Vernon, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 18, 2023 appellant filed a timely appeal from a May 4, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated October 27, 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 over the merits of the claim.²

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.*

² The Board notes that following the May 4, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "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.*

FACTUAL HISTORY

On September 23, 2022 appellant, then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2022 he sustained a closed nondisplaced fracture of the base of the fifth metacarpal bone of his right hand while in the performance of duty. He explained that, at approximately 10 a.m., he became distracted while speaking to his supervisor and performed an arm movement that caused him to strike his right hand on the sharp edge of an open steel drawer located behind him. On the reverse side of the claim form, appellant's supervisor controverted the claim, asserting that appellant was not injured while working but instead injured himself when he struck his case ledge in anger. Appellant stopped work on that date.

In support of his claim, appellant submitted a September 21, 2022 unsigned visit summary from Dr. Sirivalli Chamarti, an emergency physician, diagnosing an injury of the right hand and a closed nondisplaced fracture of the base of the fifth metacarpal bone of the right hand.

In a September 22, 2022 note, Dr. Chamarti noted that appellant was treated on September 21, 2022 and excused him from work until September 29, 2022.

In a September 26, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

Thereafter, OWCP received a September 28, 2022 e-mail from N.L., an employing establishment supervisor, asserting that appellant's September 21, 2022 injury was self-inflicted. He explained that appellant became irate after he was informed of an overtime discrepancy and punched a carrier case, causing a fracture to his right hand. N.L. indicated that another supervisor witnessed the incident and that he had submitted a copy of appellant's Form CA-1 to a postal inspector for the purpose of reviewing and investigating a fraudulent claim.

By decision dated October 27, 2022, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the events or incident occurred as alleged. It noted that he did not respond to its development questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a September 21, 2022 x-ray report of appellant's right wrist, which noted an impression of minimally displaced and impacted fractures at the base of the fifth metacarpal without apparent intra-articular involvement. A September 28, 2022 x-ray report of the right wrist noted an impression of ongoing healing of the mildly displaced, impacted fifth metatarsal base fracture in unchanged alignment. An October 11, 2022 x-ray report of the same wrist noted an impression of no significant change in alignment of comminuted fracture at the base of the fifth metacarpal, and an October 28, 2022 x-ray report noted an impression of a healing fifth metacarpal base fracture without change in alignment.

In a November 10, 2022 attending physician's report (Form CA-20), Dr. Elan Goldwaser, Board-certified in sports medicine, noted that on September 21, 2022 appellant struck his hand on a metal drawer while speaking to his supervisor. He diagnosed a fifth metacarpal fracture of the right hand and returned appellant to light-duty work on that date.

On November 10, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant continued to submit evidence, including a September 21, 2022 provider note from Dr. Chamarti diagnosing an injury of the right hand and a closed nondisplaced fracture of the base of the fifth metacarpal bone of the right hand. Dr. Chamarti applied a splint, prescribed medication, and noted that appellant reported that he accidentally struck his hand against an open drawer after speaking with a supervisor.

In a March 10, 2023 notice, OWCP's hearing representative informed appellant that she had scheduled a telephonic hearing for April 19, 2023 at 9:30 a.m. Eastern Standard Time (EST). The notice included the toll-free number and appropriate passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement was received.

By decision dated May 4, 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 found that there was no indication in the case 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

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

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); *T.R.*, Docket No. 19-1952 (issued April 24, 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 Review of the Written Record*, Chapter 2.1601.6g (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

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 27, 2022 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 March 10, 2023 notice, a hearing representative notified him that she had scheduled a telephonic hearing for April 19, 2023 at 9:30 a.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate.⁷ 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 presumption is commonly referred to as the mailbox rule.⁸ Appellant did not request a postponement and 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, therefore, finds that he abandoned his request for an oral hearing.⁹

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 *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

⁸ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *L.T.*, Docket No. 20-1539 (issued August 2, 2021).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2024
Washington, DC

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

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

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