

FACTUAL HISTORY

On July 6, 2021 appellant, then a 32-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed anxiety, depression, loss of sleep, and exhaustion due to factors of her federal employment including an increased workload, increased demands and duties related to COVID-19, and work-related stress. She noted that she first became aware of her condition on May 1, 2020, and realized its relationship to her federal employment on July 2, 2021. Appellant did not stop working.

By decision dated August 4, 2022, OWCP accepted the claim for generalized anxiety disorder.

On August 16 and October 5, 2022 appellant filed claims for compensation (Form CA-7) for disability from work commencing May 22, 2022.

By decision dated December 15, 2022, OWCP denied appellant's claim for wage-loss compensation.

On January 5, 2023 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 9, 2023 notice, OWCP's hearing representative informed appellant that he had scheduled a telephonic hearing for June 9, 2023 at 10:15 a.m. Eastern Standard Time (EST). The notice included the toll-free telephone number and provided the 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 June 21, 2023, OWCP found that appellant had abandoned her request for an oral hearing as she 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 she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her 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.² 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.³

² 20 C.F.R. § 10.616(a).

³ *Id.* at § 10.617(b).

OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁴

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.⁵

ANALYSIS

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

Following OWCP's December 15, 2022 decision denying appellant's claim for wage-loss compensation, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a May 9, 2023 notice, OWCP's hearing representative notified her that OWCP had scheduled a telephonic hearing for June 9, 2023 at 10:15 a.m. EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record and provided instructions for her participation.⁶ 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.⁷ This is called the mailbox rule.⁸ As appellant failed to appear for the scheduled hearing and failed to request a postponement or explain her failure to appear in writing within 10 days of the scheduled hearing, the Board finds that she abandoned her request for an oral hearing.⁹

CONCLUSION

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

⁴ *H.C.*, Docket No. 22-0047 (issued May 25, 2022); *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).

⁵ 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).

⁶ *Id.*

⁷ *T.D.*, Docket No. 22-0705 (issued October 7, 2022).

⁸ *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).

⁹ *T.B.*, Docket No. 23-0202 (issued May 16, 2023).

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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