

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

---

**J.V., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bedford Park, IL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 23-1092  
Issued: January 3, 2024**

*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 August 14, 2023 appellant filed a timely appeal from a March 6, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated September 9, 2022, 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 her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

**FACTUAL HISTORY**

On July 29, 2022 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2022 she sustained a left little finger fracture, bruising on left hip, and scrapes to the left elbow in the performance of duty. She explained that she fell

---

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

while carrying heavy mail and ascending steps. Appellant further indicated that she fell on her left side and her finger “went in between two boards” as she tried to catch herself from the fall. On the reverse side of the claim form, appellant’s supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that appellant stopped work on July 28, 2022.

In a development letter dated August 3, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish the claim and afforded her 30 days to respond. No response was received.

By decision dated September 9, 2022, OWCP found that the July 26, 2022 incident had occurred as alleged, but denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 2, 2022 appellant requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

In a January 13, 2023 notice, OWCP’s hearing representative informed appellant that her oral hearing was scheduled for February 22, 2023 at 1:30 p.m. Eastern Standard Time (EST). She provided appellant 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 March 6, 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 noted that there was no indication in the 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 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>

---

<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).

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.<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 her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's September 9, 2022 decision denying appellant's traumatic injury claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a January 13, 2023 notice, OWCP's hearing representative notified appellant that she had scheduled a telephonic hearing for February 22, 2023 at 1:30 p.m. EST. She mailed the notice to appellant's last known address of record.<sup>8</sup>

Appellant however, failed to appear for the scheduled hearing at the prescribed time. Furthermore, she 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 such, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.<sup>9</sup>

### 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.

---

<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> 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. *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).

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 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