

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE E. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Carbondale, Ill.

*Docket No. 96-790; Submitted on the Record;
Issued July 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant had abandoned his request for a hearing before an Office hearing representative.

On June 3, 1989 appellant, a 42-year-old mail clerk, was lifting a mail pouch when he suddenly experienced pain in his back radiating down to his legs, in addition to shortness of breath. Appellant filed a Form CA-1 claim for benefits based on traumatic injury to his lower back on June 3, 1989, which the Office accepted for acute lumbosacral strain by letter dated July 5, 1989.¹

On March 24, 1990 appellant filed a CA-2 claim for recurrence of disability, alleging that on March 20, 1990 he experienced an exacerbation of his lower back pain. The Office accepted appellant's claim by letter dated May 30, 1990.

On January 24 and May 3, 1994 appellant filed CA-2 claims for recurrence of disability, alleging that on January 3, 1994 he experienced an exacerbation of his lower back pain.

On May 5, 1994 appellant filed another CA-2 claim for recurrence of disability, alleging that on May 3, 1994, the date he returned to work after being on sick leave for several weeks, he experienced an exacerbation of his lower back pain.

By decision dated August 17, 1994, the Office found that appellant had claimed employment-related total disability for the following twelve dates: June 4 to 5; June 17; June 30; July 1 and July 21, 1989 March 1; March 20 and April 18 to 20, 1990. The Office noted, however, that appellant had provided medical evidence supporting disability relating to the June 3, 1989 accepted employment injury for only three of these dates: June 4; June 5 and July 17, 1989. The Office denied compensation after July 17, 1989 because appellant failed to

¹ The Office subsequently expanded the accepted condition to include a herniated disc at L5-S1.

submit additional evidence supporting employment-related disability relating to the June 3, 1989 accepted employment injury for those dates.

In a letter received by the Office on September 13, 1994, postmarked September 13, 1994, appellant requested a hearing regarding his claim. He also stated in his letter that he was enclosing medical evidence for the periods of disability claimed and denied by the Office in its August 17, 1994 decision and that he had been unable to produce this evidence due to the length of time elapsed between the dates of his medical examinations and the date of the Office's decision.

In an August 4, 1995 letter, the Office informed appellant that a hearing would be held on September 13, 1995. This letter was sent to appellant's address of record.

In a September 29, 1995 decision, the Office found appellant abandoned his request for a hearing, as he failed to appear at the time and place set for the hearing and did not show good cause for his failure to appear within 10-calendar days after the time set for the hearing.

The instant appeal was received by the Board and filed on January 16, 1996. The only Office decision over which the Board has jurisdiction is the September 29, 1995 decision, finding that appellant had abandoned his request for a hearing.²

The Board finds that the Office properly found that the appellant had abandoned the request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act³ provides claimants under the Act a right to a hearing if they request a hearing within 30 days of the Office's decision. Pursuant to section 10.137 of the applicable regulations⁴ a scheduled hearing may be postponed upon written request of a claimant or his representative if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. If a claimant fails to appear for a scheduled hearing, he has 10 days after the date of the scheduled hearing to request that another hearing be scheduled. Where good cause for the failure is shown, a second hearing will be scheduled.

In the instant case, appellant failed to appear at the scheduled hearing on September 13, 1995, did not attempt to provide appropriate notice that he would not attend and made no attempt to postpone the hearing date. Further, appellant failed to show good cause within 10 days of the scheduled hearing date as to why he failed to appear. Based on these facts, therefore, the Office properly found under section 10.137 that appellant abandoned his request for a hearing.

² See 20 C.F.R. § 501.3(d).

³ 5 U.S.C. § 8124.

⁴ 20 C.F.R. § 10.137.

It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.⁵ The appearance of the properly addressed copy of the hearing notice in the case record, together with the mailing custom or practice of the Office itself, raises the presumption that the original was received by the addressee.⁶

In his letter and form to the Board requesting appeal, appellant has not contested the Office's September 29, 1995 decision, finding that he abandoned his request for a hearing, but has attempted to contest the Office's denial of further disability compensation based on the merits. However, the Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision.⁷ The Board finds that the Office's finding of abandonment was proper under the circumstances of this case.⁸

The decision of the Office of Workers' Compensation Programs dated September 29, 1995 is, therefore, affirmed.

Dated, Washington, D.C.
July 15, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Mike C. Gaffer*, 44 ECAB 942 (1993).

⁶ *George F. Gidicsin*, 36 ECAB 175 (1984).

⁷ 20 C.F.R. § 501.2(c).

⁸ *Mike C. Gaffer*, *supra* note 5.