

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT D. PARKS and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION, Glynco, GA

*Docket No. 99-1624; Submitted on the Record;
Issued December 18, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on January 6, 1998 causally related to his accepted August 9, 1984 employment injury; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant had abandoned his request for an oral hearing.

On August 13, 1984 appellant, then a 38-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 1984 he sustained torn muscles and tendons in the shoulder and back during practical exercise with boy scouts. He stated that he was thrown to the floor with his hands handcuffed behind his back.

The Office accepted appellant's claim for a contusion to the lumbar spine.

On February 16, 1998 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability. He stated that he had loss strength in his shoulder and experienced constant pain.¹ Appellant's claim was accompanied by factual and medical evidence.

By letter dated July 22, 1998, the Office advised appellant to submit factual and medical evidence supportive of his claim. In an August 7, 1998 response, appellant submitted additional factual evidence accompanied by medical evidence.

In a decision dated September 13, 1998, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on January 6, 1998 causally related to his August 9, 1984 employment injury. In a September 18, 1998 letter, appellant requested an oral hearing before an Office representative.

¹ At the time he filed his recurrence claim, appellant had retired from the employing establishment.

By notice dated February 26, 1999, the Office advised appellant that a hearing was scheduled for Tuesday, March 30, 1999 at 9:45 a.m. at the specified address. The Office also advised appellant that if he no longer desired a hearing then he should request a cancellation immediately from the Branch of Hearings and Review. The notice was sent to appellant's address of record.²

In a March 3, 1999 letter, appellant indicated that he had received the Office's October 20, 1998 letter providing that his file would be assigned to a hearing representative within 30 days and that a decision would be issued within 90 days from that assignment. He stated that "[b]y my calculations, it has now exceeded 120 days since the date of your letter and I have yet to be notified of any action by the Branch of Hearings and Review. Please advise if my pending file is in error."

By decision dated April 12, 1999, the Office found that appellant had abandoned his request for a hearing because he failed to appear at the hearing and did not provide an explanation for his failure to appear prior to or after the scheduled hearing. The Office mailed this decision to appellant's address of record.

On appeal, appellant contends that he did not receive the February 26, 1999 notice of hearing and that he therefore was not afforded the opportunity to attend the hearing.

Regarding the second issue first, the Board finds that the Office improperly determined that appellant abandoned his request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act⁶ provides claimants under the Act, a right to a hearing if they request a hearing within 30 days of the Office's decision. In this case, appellant made a timely request for an oral hearing.

Section 10.137 of Title 20 of the Code Federal Regulations sets forth the criteria for abandonment of hearings:

"A scheduled hearing may be postponed or canceled at the option of the Office, or upon written request of the claimant 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. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant."

* * *

"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. The failure of the claimant to request another hearing within 10 days,

² Although the record reveals that appellant had several different mailing addresses since he filed his Form CA-1 on August 13, 1984, appellant's address of record at the time he filed his Form CA-2a was 32518 NW Eagle Crest Drive, Ridgefield, Washington.

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.”³

The Office advised appellant by letter dated February 26, 1999 that a hearing had been scheduled for Tuesday, March 30, 1999. However, the record reveals that appellant did not receive this letter. In a March 3, 1999 letter to the Office, appellant stated, “I have yet to be notified of any action by the Branch of Hearings and Review.” The record contains no response by the Office. The Board finds that appellant’s contention is supported by the record. The Board therefore finds that, under this circumstance, appellant did not receive notice of the hearing and his failure to appear at the hearing or show cause for not appearing within 10 days after the scheduled date of the hearing does not constitute abandonment of his request for a hearing.

The case shall be remanded to the Office. The Office shall reschedule appellant’s requested hearing before an Office representative. Following the hearing, the Office hearing representative shall issue a *de novo* decision on the merits of the claim.

Because of the Board’s disposition of the second issue, it is premature for the Board to address the first issue, which constitutes the merits of the case.

The February 26, 1999 and September 13, 1998 decisions of the Office of Workers’ Compensation Programs are hereby set aside and the case is remanded to the Office for further development consistent with this decision.

Dated, Washington, DC
December 18, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ 20 C.F.R. §§ 10.137(a), (c).