

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA D. BODIE and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Laguna Niguel, CA

*Docket No. 98-707; Submitted on the Record;
Issued September 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant abandoned her request for an oral hearing before an Office of Workers' Compensation Programs' hearing representative.

In a decision dated June 11, 1996, the Office rejected appellant's claim that she sustained an emotional condition while in the performance of her duties. The Office found that the evidence of record was insufficient to establish that her psychological condition arose out of incidents occurring in the performance of duty.

On June 18, 1996 appellant made a timely request for an oral hearing before an Office hearing representative. On October 11, 1997 the Office notified appellant that it had scheduled a hearing for November 19, 1997.

When appellant failed to appear at the scheduled hearing, the Office, having received no request for postponement or cancellation and no request for another hearing, issued a decision on December 1, 1997 finding that appellant had abandoned her request for a hearing.

The Board finds that appellant abandoned her request for an oral hearing before an Office hearing representative.

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

“A scheduled hearing may be postponed or cancelled 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 ten 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 ten 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.”¹

Appellant did not request postponement or cancellation at least three days prior to the scheduled date of the hearing, November 19, 1997. Neither did appellant request within ten days after November 19, 1997 that another hearing be scheduled. Appellant’s failure to make such requests, together with her failure to appear at the scheduled hearing, constitutes abandonment under federal regulations of her request for a hearing and the Board finds that the Office properly so determined.

The December 1, 1997 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
September 23, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹ 20 C.F.R. §§ 10.137(a), 10.137(c).