

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDIA L. RANDOLPH and U.S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, LA

*Docket No. 99-1871; Submitted on the Record;
Issued September 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned her request for a hearing; and (2) whether the Office properly determined that appellant's request for reconsideration dated April 12, 1999 was not timely filed and failed to present clear evidence of error.

On August 13, 1997 appellant, then a 32-year-old data conversion operator, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that while looking downward toward the terminal and keyboard while typing she began to experience pain in her neck, head, mouth and face. Appellant stated that she became aware of the condition on May 15, 1997. Appellant stopped work on June 4, 1997.

Appellant and the employing establishment submitted evidence pertaining to the claim.

In a decision dated November 28, 1997, the Office denied appellant's claim as the evidence was not sufficient to establish that the condition was caused by employment factors. The Office noted that there were discrepancies in the injury histories given to the physicians, the employing establishment and the Office.

Appellant requested an oral hearing before an Office hearing representative.

By notice dated August 15, 1998, the Office advised appellant that a hearing had been scheduled in her case for September 21, 1998.

By letter dated September 15, 1998, appellant requested a postponement or rescheduling of the oral hearing before an Office hearing representative. Appellant asserted that she needed more time to obtain evidence and also to secure legal counsel. Appellant's letter was addressed to U.S. Department of Labor, Workers' Compensation Programs, Division of Federal Employees' Compensation, Washington, D.C., and was postmarked September 16, 1998.

Appellant's postponement letter contains the Office date stamp of September 23, 1998, two days after the scheduled hearing.

By decision dated October 14, 1998, the Branch of Hearings and Review found that appellant abandoned her request for a hearing as she failed to appear for her oral hearing and did not request cancellation at least three days prior to the scheduled date of the hearing or 10 days after the hearing and did not show good cause.

By letter dated March 1, 1999, appellant indicated that she intended to submit additional evidence and also requested a hearing with an Office hearing representative. By letter dated March 22, 1999, the Office notified appellant that her claim was denied and instructed her to follow her appeal rights.

By letter dated April 12, 1999, appellant requested reconsideration of the prior decision.

By decision dated April 23, 1999, the Office denied appellant's request for reconsideration on the grounds that the request was not timely and that appellant did not present clear evidence of error by the Office.

The Board finds that the Office improperly found that appellant abandoned her request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides claimants the right to a hearing if they request a hearing within 30 days of an Office decision.¹ Sections 10.137(a), (c) of Title 20 of the Code of Federal Regulations pertaining to a postponement, withdrawal or abandonment of a hearing states in relevant part:

“(a) 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 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.”

* * *

“(c) 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, 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.”²

¹ 5 U.S.C. § 8124(b).

² 20 C.F.R. § 10.137(a), (c) (1998).

In this case, appellant requested an oral hearing following the Office's November 28, 1997 decision denying appellant's claim. The Office informed appellant by notice dated August 15, 1998, that a hearing before an Office hearing representative had been scheduled for September 21, 1998. The case record reflects that appellant's postponement/rescheduling request letter was received by the Office within 10 days after the date set for the hearing. Appellant also provided reasons for her request. Thus, the Board finds that appellant timely requested to postpone/reschedule her request for a hearing under 20 C.F.R. § 10.137(c) (1998). Therefore, in order for appellant to have abandoned her request for a hearing, she must have failed to provide "good cause" for her failure to appear.

The Office determined, in a decision dated October 14, 1998, that appellant had abandoned her request for a hearing because she did not appear at the hearing scheduled for September 21, 1998 and did not show good cause for such failure to appear. The Office did not, however, discuss the reasons provided by appellant for not appearing at the hearing or otherwise explain its conclusion that appellant had not shown good cause for such failure to appear. The Board is unable to determine what evidence the Office considered in concluding that appellant had not shown good cause for her failure to appear and whether the Office applied the appropriate standard for making such a determination.

Accordingly, the case will be remanded to the Office for determination, with clearly stated reasons, as to whether the submitted evidence constitutes "good cause" under 20 C.F.R. § 10.137 for appellant's failure to appear at the hearing scheduled for September 21, 1998 and whether appellant had abandoned her request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated April 23, 1999 and October 14, 1998 are set aside and the case is remanded to the Office for further proceedings consistent with this decision.³

Dated, Washington, DC
September 20, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

³ The Board finds that it is unnecessary to address the second issue in this case in view of the Boards disposition of the first issue.