

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES W. BELL and DEPARTMENT OF THE ARMY,  
CORPS OF ENGINEERS, Memphis, Tenn.

*Docket No. 94-2327; Submitted on the Record;  
Issued January 12, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

On October 12, 1992 appellant, then a 43-year-old welder, alleged that he sustained a left knee sprain and torn meniscus of the knee in the performance of duty. He stated that the injury occurred following a period of several days during which time he worked on his knees welding on overhead structures. The claim was accepted for a left knee sprain and torn meniscus.

By decision dated November 16, 1992, the Office determined that appellant was not entitled to continuation of pay because his employment injury occurred over more than one work day.

By letter dated December 2, 1992, submitted through his representative, appellant requested an oral hearing before an Office hearing representative.

By letter dated March 8, 1993, the Office advised appellant that a hearing would be held on April 20, 1993.

By letter dated April 11, 1993, appellant's representative requested a rescheduled hearing date.

By letter dated November 23, 1993, sent to appellant's address of record and to his representative's address of record, the Office advised appellant that a hearing would be held on December 6, 1993.

By decision dated December 20, 1993, the Office's Branch of Hearings and Review advised appellant that he was deemed to have abandoned his request for a hearing as he had failed to appear for the December 6, 1993 hearing and had not, within 10 calendar days after the time set for the hearing, shown good cause for his failure to appear.

By letter dated January 3, 1994, appellant, through his representative, asserted that neither he nor his representative had received notification of the hearing set for December 6, 1993.

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

Appellant contends that neither he nor his representative were notified of the December 6, 1993 hearing. 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.<sup>1</sup> This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.<sup>2</sup> The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.<sup>3</sup> In this case, the record shows that notification of the December 6, 1993 hearing was mailed to the addresses of record which had been provided by appellant and by his representative. Therefore, it is presumed that notification of the hearing was received by appellant and his representative.

Because more than one year has elapsed between the issuance of the Office's November 16, 1992 decision, which determined that appellant was not entitled to continuation of pay, and July 6, 1994, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the November 16, 1992 decision.<sup>4</sup> The Office's December 20, 1993 decision, which determined that appellant had abandoned his request for a hearing was issued within a year prior to appellant's filing of her claim with the Board and, therefore, this decision is within the Board's jurisdiction.

Section 8124(b) of the Federal Employees' Compensation Act<sup>5</sup> provides claimants under the Act a right to a hearing if requested within 30 days of an Office decision.<sup>6</sup> Section 10.137 of Title 20 of the Code of Federal Regulations pertaining to postponement, withdrawal or abandonment of a hearing request states in relevant part:

“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 the assessment of costs against such claimant.

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<sup>1</sup> *George F. Gidicsin*, 36 ECAB 175, 178 (1984).

<sup>2</sup> *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

<sup>3</sup> *Larry L. Hill*, 42 ECAB 596, 600 (1991).

<sup>4</sup> *See* 20 C.F.R. § 501.3(d)(2).

<sup>5</sup> 5 U.S.C. § 8124(b).

<sup>6</sup> *Id.*

“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. Where good cause is shown for failure to appear at the second scheduled hearing, another hearing will be scheduled. Unless extraordinary circumstances such as hospitalization, a death in the family, or similar circumstances which prevent the claimant from appearing are demonstrated, failure of the claimant to appear at the third scheduled hearing shall constitute abandonment of the request for a hearing.”<sup>7</sup>

In the present case, by letter dated December 2, 1992, appellant requested a hearing before an Office representative in connection with the Office’s November 16, 1992 decision. By notice dated November 23, 1993, the Office advised appellant of the time and place of a hearing scheduled for December 6, 1993. Appellant did not request postponement at least three days prior to the scheduled date of the hearing. Neither did he request within 10 days after the scheduled date of the hearing that another hearing be scheduled. Appellant’s failure to make such requests, together with his failure to appear at the scheduled hearing, constitutes abandonment of his request for a hearing and the Board finds that the Office properly so determined.

The December 20, 1993 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.  
January 12, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> 20 C.F.R. § 10.137(c).