

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAY K. JONES and U.S. POSTAL SERVICE, VEHICLE
MAINTENANCE FACILITY, San Antonio, TX

*Docket No. 98-585; Submitted on the Record;
Issued December 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On May 17, 1996 appellant, then a 35-year-old mechanic, filed an occupational disease claim alleging that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

By decision dated September 24, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that his claimed emotional condition occurred in the performance of duty. Appellant's copy of the decision was sent to his address of record.¹

By letter dated October 20, 1996, appellant requested an oral hearing before an Office hearing representative. He provided the same address which he had provided on his claim form, his address of record.

By letter dated August 16, 1997, the Office advised appellant that a hearing would be held in his case on September 24, 1997 and the time and place of the hearing was provided. This letter was sent to appellant's address of record.

By decision dated October 10, 1997, the Office noted that appellant had failed to appear for the hearing scheduled for September 24, 1997 and that he did not request cancellation at least three calendar days prior to the scheduled hearing. He was advised that a decision had been made, that he had abandoned his request for a hearing because he did not appear for the hearing

¹ This address was the one supplied by appellant on his claim form.

and did not, within 10 calendar days after the time set for the hearing, show good cause for his failure to appear.²

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

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ As appellant filed his appeal with the Board on November 26, 1997 the only decision properly before the Board is the Office's October 10, 1997 decision finding that appellant had abandoned his request for a hearing. The Board has no jurisdiction to consider the Office's September 24, 1996 decision denying appellant's claim for compensation benefits.⁴

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 This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁶ 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.⁷ The Office's finding of abandonment in this case rests on the strength of this presumption. The Office's August 16, 1997 notice which advised appellant of the time and place of a hearing scheduled for September 24, 1997 was addressed to appellant's correct address of record. This was also the address provided by appellant in his claim form and is the address to which the Office's September 24, 1996 decision, clearly received by appellant, was mailed and, therefore, it must be presumed to be a proper address for appellant and the presumption stands that appellant received notice of the scheduled hearing.

Section 8124(b) of the Federal Employees' Compensation Act⁸ provides claimants under the Act a right to a hearing if they request a hearing within 30 days of the Office's decision.⁹ At the time of the Office's October 10, 1997 decision that appellant had abandoned his request for a hearing, the applicable regulation was section 10.137 of the Code of Federal Regulations.¹⁰

² Subsequent to issuance of the Office's October 10, 1997 decision, appellant submitted new evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

³ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

⁴ *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

⁵ *See A.C. Clyburn*, 47 ECAB 153, 159 (1995).

⁶ *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁷ *Larry L. Hill*, 42 ECAB 596, 600 (1991).

⁸ 5 U.S.C. § 8124(b).

⁹ 5 U.S.C. § 8124(b).

¹⁰ 20 C.F.R. § 10.137.

Under section 10.137, a scheduled hearing could be postponed upon written request of a claimant or his representative if the request was received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement was shown. If a claimant failed to appear for a scheduled hearing, he had 10 days after the date of the scheduled hearing to request that another hearing be scheduled. Where good cause for the failure to appear was shown, a second hearing would be scheduled. If the claimant or his representative failed to appear at the second hearing without good cause, he was considered to have abandoned his request for a hearing. If good cause was shown for failure to appear at a second scheduled hearing, another hearing would be scheduled. The regulations stated, "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." In this case, appellant did not make a written request for postponement at least three days prior to the scheduled date of the hearing and show good cause for the postponement. He also did not request, within 10 days of the date of the scheduled hearing that he failed to attend, that another hearing be scheduled. Therefore, the Office properly found that appellant had abandoned his request for a hearing.

The October 10, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 22, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member