

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SIMON VANSON and U.S. POSTAL SERVICE,  
POST OFFICE, Glendale, CA

*Docket No. 98-1600; Submitted on the Record;  
Issued December 27, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an emotional condition causally related to factors of his federal employment; and (2) whether appellant abandoned his request for a hearing.

On December 2, 1996 appellant, then a 32-year-old city carrier, filed a notice of occupational disease, alleging that he suffered an emotional condition due to harassment, retaliation and his being declared unfit for duty.

By letter dated March 11, 1997, the employing establishment indicated that appellant was not allowed back to work, pending medical clearance, because he appeared to be on medication and demonstrated memory problems.

On March 17, 1997 the Office requested additional information, including information regarding the factors causing appellant's alleged condition and rationalized medical evidence.

By decision dated July 22, 1997, the Office of Workers' Compensation Programs rejected appellant's claim because the evidence failed to establish that appellant's alleged emotional condition arose out of the performance of his federal employment. In an accompanying memorandum, the Office found that appellant failed to establish any compensable factors of employment.

On August 14, 1997 appellant requested a hearing and stated, "I have a person representing me."

In a letter dated February 14, 1998, the Office advised appellant that it scheduled a hearing on March 19, 1998.

In a letter date stamped as received by the Office on March 23, 1998, appellant indicated that he was unable to attend the March 19, 1998 hearing because his representative was required to go to court on short notice. Appellant requested a new date for his hearing.

By decision dated March 26, 1998, the Branch of Hearings and Review stated that appellant failed to appear at his March 19, 1998 hearing and that he did not request cancellation at least three calendar days prior to the hearing. The Office further stated that it received appellant's letter requesting a postponement of the hearing due to a court appearance by his representative. The Office indicated that because appellant did not previously inform it that he had a representative, it would deny his request for a postponement. The Office concluded that pursuant to 20 C.F.R. § 10.137 it found that appellant abandoned his request for a hearing because he failed to appear at the hearing and did not show good cause for the failure.

The Board finds that appellant did not abandon his request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides claimants under the Act a right to a hearing if they request a hearing within 30 days of an Office decision.<sup>1</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) 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 the assessment of costs against such claimant.”

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“(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. 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>2</sup>

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<sup>1</sup> 5 U.S.C. § 8124(b).

<sup>2</sup> 20 C.F.R. § 10.137(c).

In this case, appellant failed to attend the March 19, 1998 hearing and sent a letter, date stamped as received by the Office on March 23, 1998, requesting a new hearing because his representative could not attend the hearing due to an unscheduled court appearance. The Board notes that pursuant to 20 C.F.R. § 10.137(c), appellant timely requested rescheduling of the hearing and timely provided a reason for this request and, in order for appellant to have abandoned his request for a hearing, he must have failed to provide “good cause” for his failure to appear.<sup>3</sup> The Office indicated that appellant failed to show good cause for his failure to attend the hearing because he had not previously informed it that he had a representative. Appellant, however, indicated in his August 14, 1997 request for a hearing that he would “have a person representing me.” Consequently, the Office erred in stating that it was not informed that appellant had a representative.<sup>4</sup>

The issue, therefore, is whether the inability of appellant’s representative to attend due to an unscheduled court appearance constitutes “good cause” for his failure to attend the hearing. The term “good cause” is not defined within the Act,<sup>5</sup> or applicable federal regulations. In common usage, however, “good cause” is defined as: “Substantial reason, one that affords a legal excuse. Legally sufficient grounds or reason.”<sup>6</sup>

The Board emphasized the importance of an employee’s right to be represented at Office hearings in the case of *Melvina A. Smith*.<sup>7</sup> In that case, the claimant’s representative was unable to attend the hearing as he had not received notice from the Office and had a scheduling conflict. The claimant appeared at the hearing without the benefit of counsel. The Board found, “The failure of the Office to notify appellant’s attorney of record of the hearing deprived appellant of the assistance of counsel which she had informed the Office she wanted. This resulted in her not receiving the hearing to which she was entitled.”<sup>8</sup>

*Melvina A. Smith* recognizes that for an employee to appear at a hearing without representation, after expressing a desire for such, would result in the employee not receiving the hearing to which he or she is entitled. Applying this principle to the instant case reveals that the inability of appellant’s representative to appear at her oral hearing due to circumstances beyond her control would provide a substantial reason, one that affords a legal excuse and legally sufficient grounds or reason for appellant not to appear at the hearing and to request rescheduling, as provided for in the regulations. This reason and legal excuse being that appellant would not receive the hearing to which she is entitled without the presence of her

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<sup>3</sup> *Id.*; see also *Eric E. Brickers*, 45 ECAB 686 (1994).

<sup>4</sup> 20 C.F.R. § 10.142 provides that, “Any claimant may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on record at the hearing.”

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> BLACK’S LAW DICTIONARY, 623 (5th ed. 1979).

<sup>7</sup> 33 ECAB 1937 (1983).

<sup>8</sup> *Id.* at 1938.

representative. The inability of appellant's representative to appear at the scheduled hearing, therefore, constitutes "good cause" for appellant's failure to appear.

The Board finds that appellant properly and timely provided a written request to postpone the hearing scheduled for March 19, 1998 and further established "good cause" for her request. Appellant is, therefore, entitled to have another hearing scheduled.

In view of the Board's determination regarding abandonment of a hearing, the issue of whether appellant established an emotional condition in the performance of duty is premature and will not be addressed at this time.

The decision of the Office of Workers' Compensation Programs dated March 26, 1998 is hereby set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
December 27, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member