

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERLYNN D. FRAZIER and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

*Docket No. 97-1447; Submitted on the Record;
Issued February 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On March 1, 1994 appellant, then a 47-year-old postal distribution clerk, filed an occupational disease claim, alleging that she sustained depression and anxiety due to factors of her federal employment. In a decision dated September 23, 1994, the Office denied appellant's claim on the grounds that the evidence of record did not establish that she sustained a work-related psychiatric injury and, therefore, fact of injury was not established.

Appellant requested an oral hearing before an Office hearing representative. By decision dated June 1, 1995 and finalized June 2, 1995, an Office hearing representative set aside the Office's September 23, 1994 decision and remanded the case for further development of the medical evidence after finding that a compensable factor of employment was established. In a decision dated July 19, 1995, the Office set aside the June 2, 1995 decision of the Office hearing representative on the grounds that he did not have all of the relevant evidence before him when he determined that appellant established a compensable factor of employment, *viz.*, that appellant's supervisor called her names. While the Office was preparing the statement of accepted facts it received a denial from appellant's supervisor, E. Balia, that any incident occurred in which appellant was called a name. After reviewing this evidence, the Office determined that appellant had not established any compensable factors of employment in relation to her emotional condition claim. By letter dated August 6, 1995, appellant requested a hearing in her case. By letter dated June 18, 1996, appellant advised the Office that her address had changed and on September 16, 1996, the claims examiner requested that the change of address be entered into the system. In a letter dated December 7, 1996, the Office advised appellant that her hearing was scheduled for January 6, 1997. By decision dated January 27, 1997, the Office notified appellant that she was deemed to have abandoned her request for hearing under 20 C.F.R. § 10.137.

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly determined that appellant abandoned her request for a hearing.¹

Section 8124(b) of the Federal Employees' Compensation Act² provides that a claimant not satisfied with a decision on her claim is entitled, upon timely request, to a hearing before a representative of the Office.³ In the instant case, appellant made a timely request for a hearing before an Office hearing representative.

The Office has the burden of proving that it mailed to a claimant notice of a scheduled 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 claimant. This presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.⁴ Although appellant contends on appeal that she did not receive notification of the hearing, the record does contain change of address information for appellant after her request for a hearing was filed, and the December 7, 1996 notice was sent to her last address of record.

Thus a review of the record indicates that the Office mailed appellant a notice of hearing dated December 7, 1996 to her address of record, and a copy of this letter is contained in the record. Therefore, as it appears from the record that the notice was duly mailed to appellant and that the notice was properly addressed, the presumption arises that appellant received notice of the hearing.⁵

Section 10.137 of Title 20 of the Code of Federal Regulations provides in relevant part:

“A claimant who fails to appear at a scheduled hearing may request in writing 10 days after the date set for the hearing that another hearing be scheduled. Where good cause 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 hearing.”⁶

¹ 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. As appellant filed her appeal with the Board on March 19, 1997, the only decision before the Board is the Office's January 27, 1997 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(b).

⁴ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ *Id.*

⁶ 20 C.F.R. § 10.137(c); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims: *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(d) and (e) (October 1992). The Board notes that under the Procedure Manual, the date of a request for the rescheduling of a hearing is determined by the postmark date.

Appellant did not appear at the scheduled January 6, 1997 hearing, of which she had timely and proper notice, nor did she, within 10 days after the date of the hearing, give a reason for her failure to appear as required by the regulations. Therefore, the Office had sufficient reason to find that the request for a hearing had been abandoned.

The decision of the Office of Workers' Compensation Programs dated January 27, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 12, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member