

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY E. ALLEN and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, Ill.

*Docket No. 98-397; Submitted on the Record;
Issued February 9, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The Office, by decision dated June 14, 1996, denied appellant's claim that he sustained the condition of post-traumatic stress disorder in the performance of duty.¹ Appellant requested a hearing before an Office hearing representative in connection with the Office's June 14, 1996 decision and a hearing was scheduled to take place on February 26, 1997. By letter dated February 14, 1997, appellant requested a postponement of the hearing set for February 26, 1997. By letter dated March 27, 1997, the Office approved appellant's request for a postponement and, by notice dated June 7, 1997, rescheduled the hearing for July 14, 1997. Appellant did not appear at the hearing on July 14, 1997 but advised the Office's Branch of Hearings and Review in a June 17, 1997 letter, which was received by the Office on July 16, 1997, that he would be unable to attend the scheduled hearing and wished that the hearing be postponed. Appellant indicated that he was still suffering from post-traumatic stress disorder from the August 29, 1995 work injury and was under the care of Elaine Thomopolous, PhD. By decision dated July 29, 1997, the Office determined that appellant had abandoned his request for a hearing because he did not appear at the hearing scheduled for July 14, 1997, failed to request cancellation at least three calendar days prior to the scheduled hearing and failed to show good cause for such failure to appear.

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

¹ Because more than one year has elapsed between the issuance of the Office's June 14, 1996 decision and October 20, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the June 14, 1996 decision; *see* 20 C.F.R. § 501.3(d)(2).

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.² 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 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.”

* * *

“(b) 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.”³

In the present case, appellant requested a hearing, and the Office's Branch of Hearings and Review scheduled his hearing for July 14, 1997. Appellant failed to appear at the scheduled hearing and failed to request cancellation at least three days prior to the scheduled hearing. By letter dated June 17, 1997 and date stamped received by the Office's Branch of Hearings and Review July 16, 1997, appellant requested a postponement of his hearing. As appellant's letter requesting postponement of the hearing was not stamped received until July 16, 1997, two days after the scheduled hearing, the Office properly found that the June 14, 1997 letter was insufficient in requesting a postponement at least three days prior to the July 14, 1997 scheduled hearing.

Appellant's June 14, 1997 letter further fails to show good cause for his failure to appear at the scheduled hearing. The Board notes that, under the standards of 20 C.F.R. § 10.137(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 and this request will be granted so long as good cause for failure to appear is shown.⁴ In his June 14, 1997 letter, appellant stated

² 5 U.S.C. § 8124(b).

³ 20 C.F.R. § 10.137(c).

⁴ See 20 C.F.R. § 10.137(c); *Eric E. Brickers*, 45 ECAB 686 (1994).

that he was still suffering from post-traumatic stress disorder from the August 29, 1995 injury and that he was still under the care of a physician. The Office found, and the record supports, that appellant failed to submit any evidence supporting his assertion or any evidence supporting that the condition prevented him from appearing and participating at the scheduled hearing. The Office, therefore, had sufficient reason to find that the request for a hearing had been abandoned.

The July 29, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
February 9, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member