

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHANIE D. ROBERTS and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, Ark.

*Docket No. 96-444; Oral Argument Held November 18, 1998;
Issued March 25, 1999*

Appearances: *Erman Presley*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

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 her request for a hearing.

By decision dated April 6, 1994, the Office denied appellant's claim for a traumatic injury to her right shoulder and arm allegedly sustained on October 26, 1992, on the basis that fact of injury was not established.

By letter dated April 16, 1994, appellant's representative on appeal, Erman Presley, requested a hearing before an Office hearing representative. On July 28, 1995 the Office's Branch of Hearings and Review sent appellant a notice that a hearing would be held on September 12, 1995 at 9:00 a.m. at the following location: Federal Building, 700 West Capitol Ave., Room 3331, Little Rock, AR. 72201.

In a letter to the Office's Branch of Hearings and Review dated August 7, 1995, Mr. Presley noted that the Branch of Hearings and Review had "advised appellant ... of her scheduled Prehearing and Hearing, Sept. 12, 1995, 9:00 a.m. at the Federal Building, 700 West Capitol Ave., Room 3331, Little Rock, Arkansas 72201." Mr. Presley then stated, "In the present case, appellant was given timely notice in accordance with the Federal Employees Compensation Act. However, appellant's authorized representative was not sent a notice of the scheduled hearing of Sept. 12, 1995." In a letter to the Office dated September 8, 1995, Mr. Presley again objected to the notice of the hearing not being sent to him, and stated, "I became aware of the scheduled hearing on the date of this correspondence which is not ample time to prepare or present argument to defend appellant." Mr. Presley requested that the case be remanded to the Office for issuance of a *de novo* decision.

Neither appellant nor Mr. Presley appeared at the hearing scheduled for September 12, 1995. By decision dated October 17, 1995, the Office found that appellant had abandoned her request for a hearing.

The Office's regulation concerning abandonment of a hearing, 20 C.F.R. § 10.137, 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."

* * *

"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 ... shall constitute abandonment of the request for a hearing."

On appeal, Mr. Presley contends that he was appellant's authorized representative at the time the notice of the hearing was sent to appellant, and that the Office's failure to send a notice of the hearing to him, as required by the Office's regulations,¹ precludes the Office from finding that the request for a hearing was abandoned. On appeal, the Director of the Office contends that the case record does not substantiate that Mr. Presley was appellant's authorized representative, and that the Office therefore was under no obligation to provide Mr. Presley with notice of the hearing scheduled for September 12, 1995.

For the Board to decide whether Mr. Presley was appellant's authorized representative at the time the Office's notice of the September 12, 1995 hearing was sent is not necessary to the disposition of this case. If he was not appellant's authorized representative, the request for a hearing was abandoned since appellant did not request cancellation at least 3 days prior to the hearing, did not appear at the hearing, and did not request within 10 days after the scheduled date of the hearing that another hearing be scheduled.

If Mr. Presley was appellant's authorized representative at the time the Office's notice of the September 12, 1995 hearing was sent, the hearing request nonetheless was abandoned. Although Mr. Presley was not provided with written notice of the hearing, his August 7, 1995 letter to the Office, quoted above, makes it clear that Mr. Presley had actual knowledge of the hearing scheduled for September 12, 1995. The Office's failure to provide written notice to Mr. Presley did not prejudice appellant's right to a hearing; Mr. Presley's failure to act on his actual notice of the hearing did.² Given his actual timely notice of the time and place of the

¹ 20 C.F.R. § 10.132 states in pertinent part: "The Office representative shall set the time and place of the hearing and shall mail written notice thereof to the claimant, the claimant's representative, and the employing agency at least 15 days prior the hearing."

² "One having actual knowledge is not prejudiced by, and cannot complain of, a failure to receive formal notice."

scheduled hearing, Mr. Presley, if he was appellant's authorized representative, had an obligation to appear at the hearing, or to request postponement or rescheduling of the hearing. Mr. Presley did not request cancellation at least 3 days prior to the hearing, did not appear at the hearing, and did not request within 10 days after the scheduled date of the hearing that another hearing be scheduled.

The Board finds that appellant abandoned her request for a hearing.

The decision of the Office of Workers' Compensation Programs dated October 17, 1995 is affirmed.

Dated, Washington, D.C.
March 25, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

73A C.J.S. Public Administrative Law and Procedure § 135 (1983). The representative's actual knowledge in this case distinguishes the present from the facts of *Thomas H. Harris*, 39 ECAB 899 (1988).