

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD R. BLACKWELL and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, Okla.

*Docket No. 97-564; Submitted on the Record;
Issued March 2, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office properly determined that appellant abandoned his request for a hearing.

In this case, the Office accepted that appellant, then a 38-year-old letter carrier, sustained post-traumatic stress disorder on or before May 6, 1993.¹ The record indicates that on July 29, 1993 employing establishment inspectors accused appellant of opening an undeliverable letter and that appellant resigned his postal employment. He continued to receive wage-loss compensation on the daily rolls.

By notice dated July 26, 1995 and finalized August 28, 1995, the Office terminated appellant's wage-loss compensation on the grounds that his post-traumatic stress disorder ceased no later than July 29, 1993, when he resigned from the employing establishment.² Appellant disagreed with this decision, and through his elected representative, requested an oral hearing before a representative of the Office's Branch of Hearings and Review.

By notice dated May 21, 1996, the Branch of Hearings and Review advised appellant that an oral hearing had been scheduled in his case for June 13, 1996 at 1:30 p.m. at the Old Post Office Building, fourth floor conference room, 215 Dean McGee Avenue, Oklahoma City, Oklahoma. This notice was addressed to appellant at "P[ost] O[ffice] B[ox] 25661, O[klahoma]C[ity], O[klahoma] 73125."

¹ Appellant was present at the employing establishment on August 20, 1986 when a postal employee shot and killed 14 coworkers. Appellant, a chief union steward, had represented the perpetrator and felt that he should have been able to prevent the tragedy. The record indicates that under Claim No. A16-119300, appellant had a claim accepted previously for major depression and an adjustment disorder beginning on August 20, 1986, with an August 1989 recurrence. This claim is not before the Board on the present appeal. Appellant filed a notice of occupational disease on July 22, 1993 for post-traumatic stress disorder.

² The August 28, 1995 decision did not effect appellant's entitlement to medical benefits.

The record indicates that appellant did not appear at the hearing, request a second hearing within 10 days of June 13, 1996, or otherwise contact the Branch of Hearings and Review within 10 days of June 13, 1996.

By decision dated August 13, 1996, the Office found that appellant had abandoned his request for a hearing under 20 C.F.R. § 10.137 as he failed to appear for the scheduled June 13, 1996 hearing, and failed to show good cause for failure to appear within 10 days of the June 13, 1996 hearing. This decision was addressed to appellant at “P[ost] O[ffice] B[ox] 25661, Oklahoma City, O[klahoma] 73125.”

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 19, 1996, the only decision properly before the Board is the August 13, 1996 decision regarding abandonment of hearing.

Section 8124(b) of the Federal Employees’ Compensation Act⁴ provides claimants under the Act, a right to a hearing if they request a hearing within 30 days of the Office’s decision. Under section 10.137 of the applicable regulations,⁵ a scheduled hearing may be postponed upon written request of a claimant or his representative 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. If a claimant fails to appear for a scheduled hearing, he or she has 10 days after the date of the scheduled hearing to request that another hearing be scheduled.

Appellant requested an oral hearing pursuant to the Office’s August 28, 1995 decision terminating his wage-loss compensation. By notice dated May 21, 1996, the Branch of Hearings and Review advised appellant that an oral hearing had been scheduled in his case for June 13, 1996 and of its precise time and location. This notice was addressed to appellant at his address of record, Post Office Box 25661, Oklahoma City, Oklahoma 73125.

The record indicates that appellant did not request a postponement at least three days prior to June 13, 1996, appear at the hearing, request a second hearing within 10 days of June 13, 1996, show good cause for his failure to appear, or otherwise contact the Branch of Hearings and Review within 10 days of June 13, 1996. Thus, the Office properly found in its August 13, 1996 decision that appellant had abandoned his request for a hearing under 20 C.F.R. § 10.137.

On appeal, appellant alleges that he did not receive the May 21, 1996 notice of oral hearing addressed to him at “P[ost] O[ffice] B[ox] 25661, O[klahoma] C[ity], O[klahoma] 73125” The Board finds, however, that the notice was accurately addressed to

³ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁴ 5 U.S.C. § 8124.

⁵ 20 C.F.R. § 10.137.

appellant at his address of record.⁶ Appellant received regular correspondence from the Office throughout 1994 and 1995 at the Post Office Box 25661 address. Also, appellant used this address on his correspondence with the Office beginning in December 1993. There is no indication of record that the May 21, 1996 notice of oral hearing was returned to the Office as undeliverable or incorrectly addressed. Thus, appellant has not provided any credible proof that he did not receive the May 21, 1996 notice.

The decision of the Office of Workers' Compensation Programs dated August 13, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 2, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ On December 7, 1993 appellant requested that his address of record be changed from Post Office Box 55, Edmond, Oklahoma 73083 to Post Office Box 25661, Oklahoma City, Oklahoma, 73125.