

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIOLA S. ABRAMS and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 98-1446; Submitted on the Record;
Issued November 17, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On December 2, 1993 appellant, then a 36-year-old letter sorting machine clerk, alleged that she injured her left hand on November 27, 1993 while in the performance of duty. The claim was accepted for a left hand contusion.

On September 15, 1995 appellant filed a claim for a recurrence of disability, alleging that her accepted injury failed to heal properly.

By decision dated November 7, 1995, the Office denied appellant's claim for a recurrence of disability on the grounds that appellant failed to submit medical evidence that would support her claim.

By letter dated December 4, 1995, appellant requested an oral hearing before an Office hearing representative.

A hearing was held on September 13, 1996. The Office hearing representative, by decision issued on November 7, 1996 and finalized on November 8, 1996, reversed the November 7, 1995 decision finding that the circumstances of the case did not constitute a claim for recurrence of disability and that the Office had not established that the accepted condition had ceased. The case was remanded to the Office for medical development.

On December 11, 1996 the Office referred appellant, a statement of accepted facts and her medical record to Dr. Martin L. Bloom, Board-certified in orthopedic surgery, for a second opinion on appellant's left wrist condition.

In a medical report dated January 2, 1997, Dr. Bloom stated that, upon examination, he could not rule out tenosynovitis however this medical condition "should not prevent [appellant]

from performing her regular duty as a letter sorter machine operator.” In a supplemental note, Dr. Bloom indicated that appellant presented no objective findings of an ongoing pathology.

On January 27, 1997 the Office proposed termination of appellant’s medical benefits on the grounds that the medical evidence of record failed to establish that appellant had any continuing residuals based on her work-related injury.

By decision dated February 28, 1997, the Office terminated appellant’s benefits on the grounds that the weight of the medical evidence failed to establish a continuing work-related left hand condition causally related to her November 27, 1993 injury.

By letter dated March 21, 1997, appellant requested an oral hearing before an Office hearing representative.

By letter dated January 3, 1998, the Office advised appellant that a hearing would be held on February 4, 1998.

By decision dated February 19, 1998, the Office’s Branch of Hearings and Review advised appellant that she was deemed to have abandoned her request for a hearing as she had failed to appear for the February 8, 1998 hearing and had not, within 10 calendar days after the time set for the hearing, shown good cause for her failure to appear.

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

Appellant contends that she attempted to find the building in which the hearing was to be held on February 4, 1998, but because she had left the hearing notice at home, she was unable to appear at the hearing room in a timely fashion. Following her failure to appear at the hearing at the appropriate time, appellant contends on appeal that she had written the hearing representative on February 12, 1998, within ten days of the date of the hearing, for another hearing to be scheduled. However the record fails to disclose that the Office received such a letter within ten days from the hearing date.

Because more than one year has elapsed between the issuance of the Office’s February 28, 1997 decision, which terminated appellant’s medical benefits and April 8, 1998, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the February 28, 1997 decision.¹ The Office’s February 19, 1998 decision, which determined that appellant had abandoned her request for a hearing, was issued within a year prior to appellant’s filing of her claim with the Board and, therefore, this decision is within the Board’s jurisdiction.

Section 8124(b) of the Federal Employees’ Compensation Act² provides claimants under the Act a right to a hearing if requested within 30 days of an Office decision.³ Section 10.137 of

¹ 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8124 (b).

³ *Id.*

Title 20 of the Code of Federal Regulations pertaining to postponement, withdrawal or abandonment of a hearing request states in relevant part:

“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.”

* * *

“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.”⁴

In the present case, by letter dated March 21, 1997, appellant requested a hearing before an Office hearing representative in connection with the Office’s February 28, 1997 decision. By notice dated January 3, 1998, the Office advised appellant of the time and place of a hearing scheduled for February 4, 1998. Appellant did not request postponement at least three days prior to the scheduled date of the hearing. Neither did she request within 10 days after the scheduled date of the hearing that another hearing be scheduled.⁵ Appellant’s failure to make such requests, together with her failure to appear at the scheduled hearing, constitutes abandonment of her request for a hearing and the Board finds that the Office properly so determined.

The February 19, 1998 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
November 17, 1999

⁴ 20 C.F.R. § 10.137(c).

⁵ On appeal appellant presented a receipt of a February 10, 1998 letter that she sent to the Office on February 12, 1998 requesting that the hearing be rescheduled. As this evidence was not before the Office at the time of its February 19, 1998 decision it may not be reviewed by the Board; *see* 20 C.F.R. § 501.2(c). However, appellant may submit this evidence to the Office for review.

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member