

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HORACE BINGHAM and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, East Orange, NJ

*Docket No. 99-1; Submitted on the Record;
Issued April 14, 2000*

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 abandoned his request for an oral hearing.

The Board has duly reviewed the case record in this appeal and finds that the Office properly determined that appellant abandoned his request for an oral hearing.

On February 15, 1995 appellant, then a 50-year-old transportation driver, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 1995 he sustained injuries to the right side of his body. He stated that he sustained a fractured face and injuries to his neck, lower back and rib cage due to an automobile accident. Appellant stopped work on February 14, 1995.¹

By letter dated March 30, 1995, the Office accepted appellant's claim for zygomatic arch fracture.

On September 4, 1996 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on May 30, 1996.

By decision dated December 3, 1996, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning May 30, 1996 causally related to his February 13, 1995 employment injury.

In a December 13, 1996 letter, appellant requested an oral hearing before an Office representative.

¹ The record reveals that appellant was employed under a term appointment which expired on March 16, 1996. Appellant's employment was terminated on that date.

By decision dated September 8, 1997, the Office found that appellant had abandoned his request for a hearing because he failed to appear at the hearing and did not provide good cause for his failure to appear within 10 days after the scheduled hearing. The Office mailed this notice to appellant's address of record.

Section 10.137 of Title 20 of the Code Federal Regulations sets forth the criteria for abandonment of hearings:

“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 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.”²

In this case, the Office mailed its July 12, 1997 notice of hearing, as well as, its previous correspondence and decision to appellant at the following address: Post Office Box 416, Irvington, New Jersey 07111. Appellant neither attended the hearing nor requested within 10 days of the date of the scheduled hearing that another hearing be rescheduled. The Board finds that, under these circumstances, appellant's failure to appear at the hearing or to show good cause for his failure to appear at the hearing within 10 days after the scheduled hearing constituted abandonment of his request for a hearing. The evidence of record establishes that the Office properly served appellant with notice of hearing.

The record indicates that the Office advised appellant by letter dated October 24, 1996 that it had received a message from him regarding his recurrence claim. The Office also advised appellant that the message indicated that he had moved and could be reached at a new telephone number. The Office stated that it attempted to reach appellant at the new telephone number, but received a recorded message that the number had been disconnected. The Office then advised appellant that it was sending this reply to the last known address of record. Finally, the Office advised appellant that, if he moved, then he must provide notice of his new address. The record does not indicate that appellant submitted his new address to the Office. Further, although the Office experienced difficulty in contacting appellant, it appears that appellant did receive the Office's subsequent December 3, 1996 decision, which was mailed to his address of record, inasmuch as he timely requested an oral hearing concerning the Office's decision.

² 20 C.F.R. §§ 10.137(a), (c).

On appeal, appellant, through his counsel, contends that, at the time he was notified about the hearing date, he mistakenly believed that, since his counsel's office was handling his personal injury claim arising from the employment accident, that it was also handling his workers' compensation claim. However, the Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision.³ The Board may, therefore, not consider whether appellant's explanation is sufficient to constitute just cause.⁴ When the Office issued its decision on September 8, 1997, the record contained no explanation for appellant's failure to appear. The Office's decision was, therefore, proper.

The September 8, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 14, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ 20 C.F.R. § 501.2(c).

⁴ Appellant may submit such argument and any supporting evidence in a request for review to the Office pursuant to 5 U.S.C. § 8128.