

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH L. PERRYMAN and U.S. POSTAL SERVICE,
POST OFFICE, St. Petersburg, FL

*Docket No. 98-2546; Submitted on the Record;
Issued July 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

The Office accepted that appellant sustained a right ankle sprain on June 20, 1996 in the performance of duty. By decision dated February 4, 1997, the Office denied appellant's claim for a recurrence of his condition on October 22, 1996 on the basis that the evidence did not establish that the recurrence was causally related to the original injury.

By letter dated February 10, 1997, appellant requested a hearing. By letter dated September 6, 1997, the Office notified appellant that a hearing was scheduled for October 21, 1997. By letter dated October 3, 1997, the president of the local branch of appellant's union requested postponement of the scheduled hearing. Accompanying this request was a form signed by appellant on December 9, 1996 consenting to the disclosure to the union president of information concerning his compensation claim. By letter dated May 8, 1998, the Office notified appellant that a hearing was scheduled for June 5, 1998. By decision dated June 19, 1998, the Office found that appellant had abandoned his request for a hearing, as he had not appeared for the scheduled hearing, had not presented a written request for postponement 3 days before the scheduled hearing and had not shown good cause for not appearing within 10 days after the scheduled hearing.

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

Section 10.132 of Title 20 of the Code of Federal Regulations provides:

“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 to the hearing.”

In the present case, appellant timely requested a hearing following the Office’s February 4, 1997 decision denying his claim for a recurrence and the Office scheduled a hearing for October 21, 1997. The president of the local branch of appellant’s union requested a postponement of this hearing and the Office acted on this request by rescheduling the hearing for May 8, 1998. By this action, the Office recognized the local union president as appellant’s representative, despite the fact that the form accompanying his letter only authorized disclosure of information, not representation. Once the Office recognized the local union president as appellant’s representative, it had an obligation, under 20 C.F.R. § 10.132, to mail written notice of the rescheduled hearing to the representative. As the Office’s May 8, 1998 letter notifying appellant of the date and time of the rescheduled hearing does not contain any indication this letter was also sent to appellant’s representative, appellant was denied a hearing to which he was entitled. The case will, therefore, be remanded to the Office for appellant to be given the opportunity for the hearing he requested.¹

The decision of the Office of Workers’ Compensation Programs dated June 19, 1998 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹ *Newton D. Lashmett*, 45 ECAB 181 (1993).