

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD CHESTER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA

*Docket No. 99-1153; Submitted on the Record;
Issued July 26, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

In a decision dated November 3, 1997, the Office rejected appellant's claim that he sustained an emotional condition in the performance of his federal employment. The Office found that the evidence of record was insufficient to establish that appellant's stress-related condition arose within the performance of duty.

On November 19, 1997 appellant made a timely request for an oral hearing before an Office hearing representative. On May 30, 1998 the Office informed appellant that it had scheduled a hearing for June 23, 1998.

When appellant failed to appear at the scheduled hearing, the Office, having received no request for postponement or cancellation and no request for another hearing, issued a decision on July 10, 1998 finding that appellant abandoned his request for an oral hearing.

The Board finds that appellant abandoned his request for an oral hearing before an Office hearing representative.

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

"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. 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.”¹

Appellant did not request postponement or cancellation at least three days prior to the scheduled date of hearing, June 23, 1998. Neither did appellant request within 10 days after June 23, 1998 that another hearing be scheduled. Appellant’s failure to make such requests, together with his failure to appear at the scheduled hearing, constitutes abandonment under federal regulations of his request for a hearing and the Board finds that the Office properly so determined.

The July 10, 1998 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
July 26, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ 20 C.F.R. §§ 10.137(a), 10.137(c).