

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRABLE IVY and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 98-2462; Submitted on the Record;
Issued March 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

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

On November 24, 1993 appellant, then a 41-year-old tractor trailer operator, filed a claim for traumatic injury, alleging that he sustained injuries to his head, shoulder, back and foot as a result of an accident that day. The Office accepted appellant's claim for a concussion, scalp lacerations, abrasion on his right shoulder and right ankle and left thigh contusion.

On August 2, 1994 appellant filed a claim for a schedule award. In a decision dated January 24, 1997, the Office found that the medical evidence of record was not sufficient to establish that appellant had sustained any permanent partial impairment as a result of his November 24, 1993 work-related injuries.

On February 21, 1997 appellant requested an oral hearing before an Office hearing representative. In a letter dated August 9, 1997, the Office advised appellant that his hearing would be held on September 24, 1997. In a letter dated February 28, 1998, the Office advised appellant that his hearing was rescheduled for April 17, 1998. In an attached memorandum to the record, the claims examiner stated that appellant appeared at the September 24, 1997 hearing but that he had just recently received notice of the hearing and that he needed additional time to prepare and submit additional medical evidence. The claims examiner noted that appellant related that his mail was sent to his brother's residence.

By letter decision dated April 30, 1998, the Office notified appellant that he was deemed to have abandoned his request for a hearing scheduled for April 17, 1998 under 20 C.F.R. § 10.137.

The Board has reviewed the case record on appeal and finds that the Office properly determined that appellant abandoned his request for a hearing.¹

Section 8124(b) of the Federal Employees' Compensation Act² provides that a claimant not satisfied with a decision on his claim is entitled, upon timely request, to a hearing before a representative of the Office.³ In the instant case, appellant made a timely request for a hearing before an Office hearing representative.

The Office has the burden of proving that it mailed to a claimant a notice of a scheduled hearing. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that claimant. This presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.⁴ Although appellant contends on appeal that he did not receive notification of the hearing because he had moved, the record does not contain any change of address information for appellant after his request for a hearing was filed and the February 28, 1998 notice was sent to his last address of record.

In this case, the Office mailed appellant a notice of hearing dated February 28, 1998 to appellant's address of record. The record contains a copy of this letter. Therefore, as it appears from the record that the notice was duly mailed to appellant and that the notice was properly addressed, the presumption arises that appellant received notice of hearing.⁵

Section 10.137 of Title 20 of the Code of Federal Regulations provides in relevant part:

“A claimant who fails to appear at a scheduled hearing may request in writing 10 days after the date set for the hearing that another hearing be scheduled. Where good cause 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 hearing.”⁶

Appellant did not appear at the scheduled April 17, 1998 hearing, of which he had timely and proper notice, nor did he, within 10 days after the date of the hearing, give a reason for his

¹ 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. As appellant filed his appeal with the Board on August 12, 1998, the only decision before the Board is the Office's April 30, 1998 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(b).

⁴ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁵ *Id.*

⁶ 20 C.F.R. § 10.137(c); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(d) and (e) (October 1992).

failure to appear as required by the regulations. Therefore, the Office had sufficient reason to find that the request for a hearing had been abandoned.

The decision of the Office of Workers' Compensation Programs dated April 30, 1998 is hereby affirmed.⁷

Dated, Washington, D.C.
March 1, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁷ The Board notes that subsequent to the Office's April 30, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).