

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID F. KIRKPATRICK and U.S. POSTAL SERVICE,
POST OFFICE, Lincoln, ME

*Docket No. 98-2517; Submitted on the Record;
Issued March 7, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On March 4, 1997 appellant, then a 57-year-old letter carrier, filed a claim for traumatic injury alleging that on February 25, 1997 he "slid 6 feet on snow covered ice," causing a "3 inch gash, deep muscle cut, on back of head requiring multiple stitches."

In a report dated February 25, 1997 and received by the Office on March 7, 1997, Chris Corlin, a physician's assistant, noted that on that day appellant had sustained a head laceration and tongue contusion and that he could return to work without restrictions in 24 hours.

By letter dated March 10, 1997, the Office advised appellant that he needed to submit additional information regarding his claim for compensation, including a detailed narrative medical report explaining whether appellant was incapable of working on February 26, 1997 as a result of the February 25, 1997 incident and, if so, whether that condition was caused by appellant's employment. The Office also advised appellant that the report submitted by Mr. Corlin, a physician's assistant, had no probative value because a physician assistant is not a physician under the Federal Employees' Compensation Act and is not competent to render a medical opinion.¹

On April 7, 1997 appellant stated that he did not return to work on February 26, 1997 because he was restricted from work for 24 hours from February 25, 1997 but that when the 24-hour period expired he continued to feel "light headed and weak from the loss of blood." He also noted that he was awaiting a medical report from the emergency room attending physician.

¹ See 5 U.S.C. § 8101(2).

By decision dated April 15, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty.

On April 30, 1997 appellant, requested an oral hearing on the Office's April 15, 1997 decision denying benefits. On April 16, 1998 the Office notified appellant that a hearing would be held on May 28, 1998 in Bangor, ME. By letter decision dated June 18, 1998, the Office notified appellant that he was deemed to have abandoned his request for a hearing under 20 C.F.R. § 10.137.

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly determined that appellant abandoned his request for a hearing.²

Section 8124(b) of the Federal Employees' Compensation Act provides claimants under the Act a right to a hearing if they request a hearing within 30 days of an Office decision.³ Section 10.137 of 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."⁴

In the present case, by letter dated April 30, 1997, appellant requested a hearing before an Office hearing representative in connection with the Office's April 15, 1997 decision. By notice dated April 16, 1998, the Office advised appellant of the time and place of the hearing scheduled for May 28, 1998. Appellant did not request postponement at least 3 days prior to the scheduled date of the hearing, nor did he request within 10 days after the scheduled date of the hearing that

² 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 10, 1998, the only decision before the Board is the Office's June 18, 1998 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 5 U.S.C. § 8124(b).

⁴ 20 C.F.R. § 10.137(a),(c).

another hearing be scheduled. Appellant's failure to make such requests, together with his failure to appear at the scheduled hearing, constitutes abandonment of his request for a hearing and the Board finds that the Office properly so determined.

The record contains other evidence regarding appellant's hearing request, which was not available to the Office at the time it rendered its June 18, 1998 decision. However, the Board cannot consider this evidence for the first time on appeal.⁵ When the Office issued its June 18, 1998 decision, the record contained no explanation for appellant's failure to appear. The Office's decision, therefore, was proper.⁶

Consequently, the decision of the Office of Workers' Compensation Programs dated June 18, 1998 is affirmed.

Dated, Washington, D.C.
March 7, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁵ 20 C.F.R. § 501.2(c).

⁶ See *Clara T. Norga*, 46 ECAB 473 (1995); *Mike C. Geffre*, 44 ECAB 942 (1993).