

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LORNELL M. JOHNSON and FEDERAL JUDICIARY,  
U.S. DISTRICT COURT CLERKS OFFICE, St. Paul, MN

*Docket No. 98-2572; Submitted on the Record;  
Issued May 3, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

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

On December 1, 1991 appellant filed a notice of occupational disease and claim for compensation alleging that she had herniated discs at L3-4 and L4-5 causally related to her deputy clerk duties performed at work. On June 25, 1992 the Office accepted appellant's claim for an aggravation of degenerative disc disease at L3-4, L4-5 and L5-S1 and an aggravation of spondylolisthesis at L3-4 and L4-5. The Office paid appellant compensation for wages beginning from November 4, 1991, the day appellant stopped work.

By decision dated November 21, 1995, the Office terminated appellant's compensation benefits on the basis that the weight of the medical evidence established that the work-related aggravation of appellant's underlying condition had ceased.

By certified letter dated December 18, 1995, appellant requested a hearing before an Office hearing representative.

By decision dated March 25, 1996, the hearing representative vacated the November 21, 1995 decision and reinstated compensation benefits retroactive to November 22, 1995 based upon a conflict of medical opinion evidence, which existed in the case before the Office on November 21, 1995. The case was remanded for a *de novo* decision.

By decision dated August 1, 1997, the Office terminated compensation and medical benefits because the weight of the medical evidence of record established that appellant had no continuing disability as a result of her 1991 work injury.

By certified letter dated August 28, 1997, appellant requested a hearing before an Office hearing representative.

By notice dated February 25, 1998, the Office advised appellant that a hearing had been scheduled in her case for April 27, 1998 in Minneapolis, Minnesota.

By certified letter dated April 13, 1998, requesting return receipt, appellant withdrew her request for an oral hearing before an Office hearing representative. Appellant's certified letter was properly addressed to James W. Muskett, Hearing Representative, at the U.S. Department of Labor, Employment Standards Administration Office in Washington, D.C. and was postmarked on April 13, 1998. Appellant's withdrawal letter contains an Office date stamp of August 11, 1998.

By decision dated May 28, 1998, the Branch of Hearings and Review found that appellant failed to appear for her oral hearing, did not request cancellation 3 days prior to the scheduled date of the hearing and did not show good cause for her failure to appear within 10 days following the scheduled hearing date.

On appeal, appellant contends that she mailed a letter to withdraw her request for a hearing to Mr. Muskett, by certified mail, 14 days prior to the scheduled hearing. Appellant further requests that the Board rule that her request to withdraw her request for April 27, 1998 hearing was timely made.

The Board finds that the Office improperly found that appellant abandoned her request for a hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides claimants the right to a hearing if they request a hearing within 30 days of an Office decision.<sup>1</sup> Sections 10.137(a), (b) of Title 20 of the Code of Federal Regulations pertaining to a postponement, withdrawal or abandonment of a hearing 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 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 may withdraw a request for a hearing at any time by written notice to the Office representative before the hearing is held, or on the record at the hearing."<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8124(b).

<sup>2</sup> 20 C.F.R. § 10.137(a), (b).

In this case, appellant timely requested on August 28, 1997 that an oral hearing be held before an Office hearing representative in connection with the Office's August 1, 1997 decision terminating her compensation benefits. The Office informed appellant and her representative, by notice dated February 25, 1998, that a hearing before an Office hearing representative had been scheduled for April 27, 1998. Appellant timely withdrew her request on April 13, 1998 for the oral hearing scheduled for April 27, 1998. The case record reflects that appellant's withdrawal letter was received by the Office and date stamped on August 11, 1998; however, the postmark on appellant's envelope which contained the withdrawal request letter indicates a date of April 13, 1998. The evidence of record supports a finding that the Office received appellant's withdrawal request prior to the hearing on April 27, 1998, but that it was not properly associated with appellant's file until sometime in August after the hearing date. Thus, the Board finds that appellant properly withdrew her request for a hearing.

The decision of the Office of Workers' Compensation Programs dated May 28, 1998 is hereby reversed.

Dated, Washington, D.C.  
May 3, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member