

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH E. METZ and DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, Los Angeles, CA

*Docket No. 99-217; Submitted on the Record;
Issued May 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant abandoned her April 29, 1997 request for an oral hearing before a hearing representative of the Office of Workers' Compensation Programs.

In a decision dated April 24, 1997, the Office found that appellant was not entitled to monetary compensation or vocational rehabilitation services, effective February 10, 1997, due to the "for cause" termination of her employment.¹

On April 29, 1997 appellant requested an oral hearing before an Office hearing representative. On December 30, 1997 the Office notified her that her hearing was scheduled for January 26, 1998. On January 7, 1998 appellant requested that the hearing date be changed because she had appointments with two doctors and needed their reports for the hearing.

On May 8, 1998 the Office notified appellant that her hearing was now scheduled for June 18, 1998.

In a decision dated July 2, 1998, the Office hearing representative found that appellant abandoned her request for a hearing. The hearing representative noted that appellant failed to appear for the June 18, 1998 hearing, did not request cancellation at least three days prior to the scheduled hearing and had not to date shown no good cause for her failure to appear.

The Board finds that appellant abandoned her April 29, 1997 request for a hearing.

¹ An appeal to the Board must be mailed no later than one year from the date of the Office's final decision. 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time). As appellant filed her appeal on September 14, 1998, the Board has no jurisdiction to review the Office's April 24, 1997 decision.

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 cancelled 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. 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.”²

The evidence of record shows that appellant did not request postponement or cancellation at least three days prior to the June 18, 1998 hearing. Neither did she request within 10 days after the June 18, 1998 hearing that another hearing be scheduled. Appellant’s failure to make such requests, together with her failure to appear at the scheduled hearing, constitutes abandonment under federal regulations, and the Board finds that the Office properly so determined.

On appeal, appellant explains that she never received notice of the June 18, 1998 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 individual.³ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁴ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.⁵

The Office first notified appellant that her hearing was scheduled for January 26, 1998. She received this notice, as her January 7, 1998 request for postponement attests. In preparing its May 8, 1998 notice, the Office used exactly the same address as it had used before. The record shows this to be appellant’s last known and proper address. As there is no evidence that

² 20 C.F.R. §§ 10.137(a), 10.137(c).

³ *George F. Gidicsin*, 36 ECAB 175 (1984) (when the Office sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

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

⁵ See *Larry L. Hill*, 42 ECAB 596 (1991); see generally Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).

the May 8, 1998 notice was returned as undeliverable, it must be presumed, in the absence of evidence to the contrary, that appellant received notice of the June 18, 1998 hearing.⁶

The July 2, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 4, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁶ The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board therefore has no jurisdiction to review any evidence submitted after the Office's July 2, 1998 decision.