

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STUART L. STANGER and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Portland, OR

*Docket No. 00-875; Submitted on the Record;
Issued August 15, 2001*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing; and (2) whether appellant has met his burden of proof to establish that he sustained an injury on March 5, 1999 in the performance of duty, as alleged.

On March 9, 1999 appellant, then a 46-year-old project manager, filed an occupational disease claim, alleging that beginning March 5, 1999 he became aware of pain and soreness in his back and wrist along with numbness in his thumb and index finger that was causally related to his use of "guest" chairs as his normal work chair was unsafe. In a statement to Kaiser Permanente, appellant stated that the chair in his office was declared unsafe by employer. No replacement was provided and he had to use a "guest" chair which was not ergonomically adequate for his desk and computer work. Appellant advised that he used the "guest" chair for two days and the result has been numbness in thumb and index finger and severe upper back pain which has disrupted his sleep. In a supplemental statement dated April 19, 1999, appellant further advised that within the last two to three years he periodically experienced pain in the wrist and numbness in his thumb and index finger which he attributes to extend periods of work on the computer and poor ergonomic office furniture.

In response to a request from the Office for additional information, appellant submitted additional medical evidence. In a decision dated May 7, 1999, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate a causal connection which explained how his current condition was caused or aggravated by his sitting in a chair which was too low for two consecutive days.

By letter dated May 26, 1999, appellant requested a hearing before an Office hearing representative.

By letter dated September 24, 1999, the Office's Branch of Hearings and Review notified appellant that an oral hearing would be held on November 17, 1999 at 1:00 p.m. at the Federal Building, 911 NE 11th Avenue, Conference Room C, Portland, Oregon.

By letter dated September 30, 1999, the Office's Branch of Hearings and Review advised appellant that a review of the case record failed to reveal a detailed medical report from his treating physician. Appellant was advised to submit a medical report from his physician which addressed the relevant information outlined within the letter. Appellant was further notified that he would be advised under separate cover as to the date, time and location of his hearing.

In a November 26, 1999 letter, which the Office received December 1, 1999, appellant advised that pursuant to the Office's letter of September 30, 1999, he had not received notice as to the date, time and location of this hearing. Enclosed with the letter were some medical reports.

By decision dated December 6, 1999, the Office found that appellant had abandoned his request for a hearing because he failed to appear for the November 17, 1999 hearing and did not, within 10 days after the time set for the hearing, show good cause for his failure to appear.

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

The legal authority governing abandonment of hearings is found in the Office's procedure manual. Chapter 2.1601.6.e of the procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

“Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

“This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”¹

In the present case, by letter dated May 26, 1999, appellant timely requested a hearing before an Office representative in connection with the Office’s May 7, 1999 decision. Appellant was notified in an Office letter of September 24, 1999, that his hearing was scheduled for November 17, 1999. However, the Office subsequently advised appellant in its letter of September 30, 1999 that additional medical information was needed and that appellant would be advised under separate cover as to the exact date, time and location of the hearing. On November 26, 1999 appellant submitted additional medical information and inquired as to the status of his hearing date. Given the fact that the Office’s September 30, 1999 letter was sent to appellant approximately six days after he was notified of the November 17, 1999 hearing date and stated that appellant would be advised under separate cover as to the exact date, time and location of the hearing, it was reasonable for appellant to assume that a new hearing would be scheduled. Appellant complied with the Office’s request for additional medical information and inquired as to the status of his claim on November 26, 1999. In light of the Office’s issuance of its September 30, 1999 letter and appellant’s compliance with the Office’s instructions, the Board finds that appellant did not abandon his request for a hearing. The December 6, 1999 decision of the Office must be set aside.²

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999).

² As appellant filed a timely request for a hearing, the case must be remanded for that purpose. Any issue relevant to the merits of appellant’s claim in the Office’s May 7, 1999 decision cannot be addressed as the merits are subject to further adjudication.

The decisions of the Office of Workers' Compensation Programs dated December 6, 1999 is hereby reversed. The case is remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, DC
August 15, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member