

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YOLANDA M. TAYLOR and DEPARTMENT OF VETERANS AFFAIRS,  
COLMERY-O'NEIL VETERANS ADMINISTRATION MEDICAL CENTER,  
Topeka, KS

*Docket No. 00-1957; Submitted on the Record;  
Issued August 13, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant abandoned her request for an oral hearing before an Office hearing representative.

The Board has duly reviewed the record on appeal and finds that the Office properly determined that appellant abandoned her request for an oral hearing before an Office hearing representative.

By decision dated April 26, 1999, the Office denied appellant's claim for an employment-related emotional condition on the grounds that the purported factors were not compensable factors of employment; therefore, her emotional condition was not sustained within the performance of duty.<sup>1</sup>

By letter dated May 21, 1999, appellant, through her attorney, requested an oral hearing before an Office hearing representative. By letter of December 18, 1999, the Office's Branch of Hearings and Review notified appellant that the oral hearing was scheduled for Wednesday, January 26, 2000 at 1:00 p.m. The location for the scheduled hearing was listed as follows: "U.S. Federal Building, 601 E. 12<sup>th</sup> Street, Training Room G26, Kansas City, KS 64106." Attached to the December 18, 1999 letter was a notification dated December 21, 1999, requesting that appellant "PLEASE NOTE CORRECTION IN THE ADDRESS" for the location of the oral hearing. The address read the same as set forth in the December 18, 1999 letter, except that the city and state were listed as "KANSAS CITY, MO 64106."

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<sup>1</sup> The Board notes that, as the Office's April 26, 1999 decision was not issued within one year of May 18, 2000, the date the appeal was docketed, the Board has no jurisdiction to review this decision. See 20 C.F.R. § 501.3(d)(2).

In a decision dated March 17, 2000, the Office's Branch of Hearings and Review found that appellant abandoned her request for an oral hearing before an Office hearing representative. The Office noted that the hearing was scheduled for January 26, 2000;<sup>2</sup> that appellant received written notification of the hearing 30 days in advance of the hearing; that appellant failed to appear; and that the record was devoid of any evidence demonstrating that appellant either contacted the Office prior or subsequent to the scheduled hearing to explain her failure to appear.

Section 10.137 of Title 20 of the Code of Federal Regulations, revised as of April 1, 1997, previously set 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.”

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“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.”<sup>3</sup>

These regulations, however, were again revised as of April 1, 1999. Effective January 4, 1999, the regulations now make no provision for abandonment. Section 10.622(b) addresses requests for postponement and provides for a review of the written record when the request to postpone does not meet certain conditions.<sup>4</sup> Alternatively, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative. The section is silent on the issue of abandonment.

The legal authority governing abandonment of hearings now rests with 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

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<sup>2</sup> The Board notes that the decision actually read January 28, 2000 for the date of the scheduled oral hearing. The Board concludes that this was a typographical error on the part of the Office as the oral hearing was scheduled for Wednesday, January 26 and January 28, 2000 was a Friday.

<sup>3</sup> 20 C.F.R. §§ 10.137(a), 10.137(c) (revised as of April 1, 1997).

<sup>4</sup> 20 C.F.R. § 10.622(b) (1999).

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 prerecouplement 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.”<sup>5</sup>

In this case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on January 26, 2000. The record shows that the Office mailed appropriate notice to the claimant at her last known address. The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Because these facts meet the conditions for abandonment specified in the Office’s procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.<sup>6</sup>

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999).

<sup>6</sup> *Chris Wells*, 52 ECAB \_\_\_\_\_ (Docket No. 00-38, issued July 12, 2001); *see also Levi Drew*, 52 ECAB \_\_\_\_\_ (Docket No. 99-1453, issued July 12, 2001).

The March 17, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>7</sup>

Dated, Washington, DC  
August 13, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

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<sup>7</sup> On appeal, appellant's attorney provides reasons for appellant's failure to appear at the scheduled oral hearing. The Board concludes that, because this evidence was not before the Office at the time it issued its March 17, 2000 decision, the Board may not review it for the first time on appeal. *See* 20 C.F.R. § 501.2(c).