

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM N. DOWNER and DEPARTMENT OF THE TREASURY,  
BUREAU OF THE PUBLIC DEBT, Parkersburg, WV

*Docket No. 99-606; Submitted on the Record;  
Issued January 12, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

On September 30, 1996 appellant, then a 53-year-old property management specialist, filed a claim alleging that he sustained an emotional condition which he attributed to factors of his employment. By decision dated December 23, 1996, the Office denied his claim on the grounds that the evidence of record failed to establish that he sustained an emotional condition in the performance of duty.

By letter dated January 15, 1997, appellant requested an oral hearing before an Office hearing representative.

By letter dated July 25, 1998, the Office advised appellant that a hearing would be held in his case on September 9, 1998 and the time and the location of the hearing were provided.

By letter dated August 20, 1998, the Office advised appellant that the date of the oral hearing had been changed to September 8, 1998 at 12:45 p.m. and that the location of the hearing remained as stated in the Office's July 25, 1998 letter.

By letter dated September 3, 1998, appellant stated that he had obtained someone to represent him at the oral hearing originally scheduled for September 9, 1998 and that he subsequently went to visit relatives and received the Office letter changing his oral hearing date to September 8, 1998 upon his return home. He stated that his representative could not attend the September 8, 1998 hearing and he could not represent himself due to his emotional condition. Appellant stated, "I am not requesting an extension or another hearing. It would seem that the

least I deserve in all that has taken place, is a simple, straightforward review and fair decision in my case.”<sup>1</sup>

By decision dated September 24, 1998, an Office hearing representative advised appellant that, because he failed to appear for the oral hearing scheduled in his case on September 8, 1998 and did not provide a timely written request for another hearing or show good cause for his failure to appear at the scheduled hearing, the Office had determined that he had abandoned his request for a hearing. The hearing representative noted that in his letter dated September 3, 1998 appellant had not asked for a postponement of the hearing. She stated that, as appellant had specifically stated in his September 3, 1998 letter that he was not requesting another hearing, his failure to appear at the oral hearing scheduled for September 8, 1998 would be deemed an abandonment of his request for a hearing.<sup>2</sup>

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.<sup>3</sup> As appellant filed his appeal with the Board on December 22, 1998, the only decision properly before the Board is the Office’s September 24, 1998 decision finding that appellant had abandoned his request for a hearing. The Board has no jurisdiction to consider the Office’s December 23, 1996 decision denying appellant’s claim for an emotional condition.<sup>4</sup>

The Board finds that the Office improperly determined that appellant abandoned his request for a hearing.

Section 8124(b) of the Federal Employees’ Compensation Act<sup>5</sup> provides claimants under the Act a right to a hearing if they request a hearing within 30 days of the Office’s decision. Under section 10.137 of the applicable regulations,<sup>6</sup> a scheduled hearing may be postponed upon written request of a claimant or his representative if the request is received by the Office at least 3 days prior to the scheduled date of the hearing and good cause for the postponement is shown. If a claimant fails to appear for a scheduled hearing, he has 10 days after the date of the scheduled hearing to request that another hearing be scheduled. Where good cause for the failure to appear is shown, a second hearing will be scheduled. If the claimant or his representative fails to appear at the second hearing without good cause, he is considered to have abandoned his request for a hearing. If good cause is shown for failure to appear at a second scheduled hearing, another hearing will be scheduled. The regulations state “unless

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<sup>1</sup> Appellant’s letter was date-stamped twice by the Office, on September 3 and 18, 1998.

<sup>2</sup> The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its December 24, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>3</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

<sup>4</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>5</sup> 5 U.S.C. § 8124(b).

<sup>6</sup> 20 C.F.R. § 10.137.

extraordinary circumstances such as hospitalization, a death in the family or similar circumstances which prevent the claimant from appearing are demonstrated, failure of the claimant to appear at the third scheduled hearing shall constitute abandonment of the request for a hearing.”

In this case, appellant was notified of the September 8, 1998 oral hearing, rescheduled from September 9, 1998, by Office letter dated August 20, 1998. By letter dated September 3, 1998, appellant advised the Office that his representative could not attend the rescheduled hearing on September 9, 1998. Appellant’s letter was date-stamped twice by the Office, with the dates of September 3 and 18, 1998. As the date of September 3, 1998 was at least 3 days before the scheduled September 8, 1998 hearing and the date September 18, 1998 was within 10 days of the September 8, 1998 hearing date, his letter met the time restrictions of section 10.137 and therefore would have been timely for the purpose of requesting a postponement of the hearing. However, appellant stated in his September 3, 1998 letter that he did not wish an extension or another hearing. He further stated, “It would seem that the least I deserve ... is a simple, straightforward review and fair decision in my case.”<sup>7</sup> The Board finds that the Office did not exercise its discretion by failing to consider whether appellant was requesting that his request for an oral hearing be changed to a request for a review of the written record.<sup>8</sup> For these reasons, the Office improperly found that appellant had abandoned his request for a hearing.

The decision of the Office of Workers’ Compensation Programs dated September 24, 1998 is reversed.

Dated, Washington, DC  
January 12, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas

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<sup>7</sup> Appellant’s letter was date-stamped twice by the Office, on September 3 and 18, 1998.

<sup>8</sup> 20 C.F.R. § 10.131(b) (1998).

Member