

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY M. OKUDA and DEPARTMENT OF THE TREASURY,  
CUSTOMS SERVICE, OFFICE OF INVESTIGATIONS, Laredo, TX

*Docket No. 00-2460; Submitted on the Record;  
Issued June 22, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the June 8, 2000 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.<sup>1</sup>

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<sup>1</sup> Appellant requested an oral hearing on October 28, 1999. The Branch of Hearings and Review scheduled appellant's oral hearing for March 16, 2000 in San Antonio, Texas. In a memorandum dated March 16, 2000, the hearing representative noted that appellant telephoned to state that he was unable to attend the scheduled hearing as he had no transportation and too much work to do. In a letter dated March 16, 2000, the hearing representative informed appellant that in accordance with section 10.622 of the Office's regulations he was not entitled to rescheduling or postponement of the oral hearing, but that she would conduct a review of the written record. 20 C.F.R. § 10.622. The Board finds that the hearing representative did not abuse her discretion in the application of 20 C.F.R. § 10.622. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion. *Daniel J. Perea*, 42 ECAB 214, 221 (1990). In this case, appellant did not provide any evidence that he requested scheduling, rescheduling or postponement due to one of the two exceptions of the regulation, his own involuntary hospitalization or the death of a spouse, parent or child. As the hearing representative properly applied the appropriate regulation, appellant was not entitled to a rescheduling or postponement of his oral hearing.

The June 8, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
June 22, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member