

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY B. SANDERS and DEPARTMENT OF THE AIR FORCE,
GOODFELLOW AIR FORCE BASE, TX

*Docket No. 01-1247; Submitted on the Record;
Issued January 4, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

On August 5, 1997 appellant, then a 53-year-old fire communications operator, sustained cervical and lumbar strains and bilateral shoulder strains while in the performance of duty. Appellant ceased working on August 6, 1997. As a result of his injuries, the Office paid appropriate compensation.

In August 1999, the employing establishment offered appellant a part-time, light-duty position as a clerk. Appellant accepted the position and returned to work on August 16, 1999. However, he ceased working the following day on the advice of his treating physician. The Office found the position to be suitable to appellant's work capabilities and advised him of the consequences of a refusal to accept the offered position. By letter dated December 1, 1999, the Office advised appellant that he had an additional 15 days within which to accept the clerk position. When appellant did not return to work within the designated time frame, the Office terminated appellant's compensation in a decision dated December 16, 1999.

By letter postmarked January 10, 2000, appellant requested an oral hearing before an Office hearing representative. The Branch of Hearings and Review acknowledged receipt of appellant's request on February 2, 2000 and advised that his hearing was scheduled for November 14, 2000 at 1:30 p.m. in Lubbock, TX.

By decision dated November 30, 2000, the Office found that appellant had abandoned his request for a hearing, because he failed to appear or to contact the Office to explain the failure to appear.

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

Appellant did not abandon his request for a hearing because he did not receive notification of the scheduled hearing. The original September 21, 2000 notice addressed to appellant is in the record, along with the envelope.¹ Because the original notice of hearing is in the record, it is clear that appellant did not receive written notification of the time and place of the hearing at least 30 days before the scheduled date.² Therefore, the case is remanded to the Branch of Hearings and Review for further consideration.

The November 30, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded.

Dated, Washington, DC
January 4, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹ While the envelope bears a "U.S. Official Mail" frank for metered postage, the frank was not cancelled by the U.S. Postal Service. Additionally, there are no other markings on the envelope that would indicate the mail was undeliverable. Thus, there is no indication that the September 21, 2000 notice was ever properly mailed and delivered to appellant.

² 20 C.F.R. § 10.617(b) (1999).