

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH L. ENNIS and U.S. POSTAL SERVICE,
POST OFFICE, Des Moines, IA

*Docket Nos. 00-695 & 00-1177; Submitted on the Record;
Issued March 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On April 9, 1993 appellant, then a 43-year-old clerk, filed a claim for an injury to her left knee sustained on March 31, 1993. By decision dated May 24, 1993, the Office found that appellant had not established fact of injury.

On February 20, 1997 appellant, then a flat sorter machine operator, filed a claim for an occupational disease for osteoarthritis of both knees. By decision dated May 23, 1997, the Office found that the medical evidence was insufficient to establish causal relation between appellant's knee condition and factors of her employment.

On November 3, 1997 appellant filed a claim for an injury to her left knee sustained on October 22, 1997 by picking up a heavy bin. By decision dated December 31, 1997, the Office found that appellant had not established that she sustained an employment injury on October 22, 1997.

With regard to her claim for an occupational disease, appellant filed a request for hearing on June 20, 1997. This hearing was scheduled for May 7, 1998, but was postponed at the request of appellant's authorized representative. With regard to her claim for a traumatic injury on October 22, 1997, appellant requested a hearing on January 12, 1998.

By notices dated October 30, 1998, the Office notified appellant that a hearing would be held on December 1, 1998; one notice was sent to appellant regarding her claim for an occupational disease and another regarding her claim for a traumatic injury on October 22, 1997. A handwritten note on the notice regarding the claim for an October 22, 1997 traumatic injury stated that appellant was contacted by telephone on November 24, 1998 and notified that the hearings on both her claims would be held on December 1, 1998.

By decision dated December 14, 1998, the Office found that appellant abandoned her request for a hearing, as she had not appeared for the scheduled hearing, had not presented a written request for postponement 3 days before the scheduled hearing and had not shown good cause for not appearing within 10 days after the scheduled hearing.

By letter dated November 11, 1999, appellant's second attorney requested reconsideration of the Office's December 14, 1998 decision finding that appellant abandoned her request for a hearing and requested that a hearing be rescheduled.

By decision dated January 5, 2000, the Office found that appellant's request for reconsideration was not filed within one year of the Office's December 31, 1997 decision and that it did not present clear evidence of error.

By letter dated January 10, 2000, appellant's attorney stated that his previous request for reconsideration was from the December 14, 1998 decision that appellant's request for a hearing had been abandoned; the attorney requested that the Office reconsider its January 5, 2000 decision.

By decision dated February 23, 2000, the Office found that appellant's request for reconsideration was not filed within one year of the Office's December 31, 1997 decision and that it did not present clear evidence of error.

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

Section 10.132 of the Code of Federal Regulations, in effect at the time of the Office's December 14, 1998 decision,¹ provides:

“The Office representative shall set the time and place of the hearing and shall mail written notice thereof to the claimant, the claimant's representative and the employing agency at least 15 days prior to the hearing.”

By notices dated October 30, 1998, the Office notified appellant that a hearing was scheduled for December 1, 1998 on her claims for an occupational disease and for a traumatic injury sustained on October 22, 1997. Despite the fact that appellant had submitted an authorization dated April 2, 1998 for an attorney to represent her in her claims before the Office, the Office's October 30, 1998 notices of hearing do not contain any indication that they were mailed to her attorney. The Office's failure to notify appellant's attorney of record of the hearing deprived appellant of the assistance of counsel which she informed the Office she wanted.² The case therefore will be remanded to the Office for appellant to be given the opportunity for her requested hearing, on the combined claims.

¹ The Office issued new regulations that were effective January 4, 1999.

² *Newton D. Lashmett*, 45 ECAB 181 (1993); *Melvina A. Smith*, 33 ECAB 1937 (1983).

The decision of the Office of Workers' Compensation Programs dated December 14, 1998 is set aside and the case remanded to the Office for scheduling of a hearing. The Office's January 5 and February 23, 2000 decisions are also set aside.

Dated, Washington, DC
March 7, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member