

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. LANGTEAU and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, WILLOW RUN AIRPORT, Belleville, MI

*Docket No. 01-1788; Submitted on the Record;
Issued March 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant abandoned his request for a hearing before a hearing representative of the Office of Workers' Compensation Programs.

On March 27, 2000 appellant, then a 37-year-old air traffic control specialist, filed a claim asserting that his situational depression was a result of work-related abuses.

Appellant's attorney provided information to support the claim in a letter dated June 7, 2000. On June 8, 2000 the Office requested that appellant submit an authorization of representation. Appellant faxed an authorization on or about June 16, 2000. On June 19, 2000 the Office acknowledged receipt of written authorization from appellant for his attorney to represent him before the Office.

In a decision dated October 24, 2000, the Office denied appellant's claim on the grounds that the evidence failed to demonstrate that the claimed occupational injury occurred in the performance of duty due to compensable job factors. In an attached statement of review rights, the Office notified appellant that any request for a hearing must be made within 30 days after the date of the decision.

In a November 22, 2000 letter to the Office, appellant's attorney requested a hearing before an Office hearing representative.¹

On December 4, 2000 the Office advised appellant and his attorney that it had received the case record and, if it was determined that the case was in posture for an oral hearing, they could expect the case to appear on a hearing docket within four to six months.

¹ The Office date-stamped the letter as received on November 30, 2000. The record contains no postmarked envelope.

In a notice of hearing dated March 26, 2001, the Office advised appellant that an informal hearing would be held in his case on May 24, 2001 at 10:30 a.m. at the United States Courthouse and Federal Building in Detroit, Michigan. The Office further advised: "You and/or your representative should be present." The Office mailed a copy of the notice to the employing establishment; however, it does not indicate that a copy was sent to appellant's attorney.

In a decision dated June 12, 2001, the Office found that appellant had received written notification of the hearing 30 days in advance but failed to appear. As there was no indication in the file that appellant contacted the Office either prior or subsequent to the scheduled hearing to explain his failure to appear, the Office found that appellant abandoned his request for a hearing. The Office sent its decision to appellant with a copy to the employing establishment.

Appellant's attorney filed an appeal to this Board on June 21, 2001, contending that neither she nor appellant received notice of the scheduled hearing. The attorney, authorized to represent appellant before the Board, requested that a new hearing be scheduled.

The Board finds that appellant did not abandon his request for a hearing before an Office hearing representative.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

"Before review [reconsideration] under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary...."²

The implementing regulations provide for the mailing of notice:

"Sec[ti]on 10.617 How is an oral hearing conducted?"

"(a) The hearing representative retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved.

"(b) Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date. The employer will also be mailed a notice at least 30 days before the scheduled date."³

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.617 (1999). The Office's Procedure Manual also provides: "A written notice specifying the exact date, time and place for the hearing will be mailed at least 15 days prior to the scheduled hearing. The claimant, the claimant's authorized representative and the employing establishment will be provided with such written notice (Exhibit 3)." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.a (October 1992).

Although the Office mailed a notice of the May 24, 2001 hearing to appellant's last known address, it neglected to mail a notice to appellant's authorized representative. As the Office was not "otherwise directed in writing by the claimant," the Board finds that the Office failed to comply with the notice provisions of the implementing regulations. Without proper notice of the hearing, appellant's failure to appear, coupled with his failure to contact the Office to explain his failure to appear, cannot support the Office's finding that he abandoned his request for a hearing.

The June 12, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for a hearing before an Office hearing representative pursuant to 5 U.S.C. § 8124(b)(1).

Dated, Washington, DC
March 7, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member