

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT B. SNEAD and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Philadelphia, PA

*Docket No. 03-651; Submitted on the Record;
Issued April 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

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

On November 7, 2001 appellant, a 44-year-old air traffic control specialist, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he suffered from post-traumatic stress disorder as a result of a November 7, 2001 employment incident. Appellant explained that, while relieving another coworker, he noticed that the other air traffic controller had placed 2 aircraft within 8 miles and 100 feet of each other. Appellant submitted documentation from a licensed clinical social worker indicating that he suffered from post-traumatic stress disorder as a result of witnessing a very near mid-air collision.

In a decision dated January 2, 2002, the Office denied appellant's claim. While the Office accepted that appellant was involved in an operational error on November 7, 2001, the Office denied the claim because the record did not include medical evidence that appellant sustained an injury as a result of the November 7, 2001 employment incident. The Office explained that the evidence submitted by appellant's social worker did not constitute competent medical evidence.

Appellant requested an oral hearing on January 25, 2002. The Office notified appellant on September 20, 2002 that the requested hearing was scheduled for October 24, 2002.

By decision dated November 5, 2002, the Office found that appellant abandoned his request for a hearing.

The Board finds that the Office properly determined that appellant abandoned his request for a hearing.¹

In the November 5, 2002 decision, the Office noted that a hearing had been scheduled in Philadelphia on October 24, 2002, that appellant received written notification of the hearing 30 days in advance of the hearing, and that appellant failed to appear. Additionally, the Office stated that there was no indication from the record that appellant contacted the Office either prior or subsequent to the scheduled hearing to explain his failure to appear. Accordingly, the Office found that appellant abandoned his request for a hearing.

With respect to abandonment of hearing requests, Chapter 2.1601.6.e of the Office's procedure manual provides in relevant part:

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

“Under these circumstances, [the Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [District Office]. In cases involving pre-recoupment hearings, [the Branch of Hearings and Review] will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [District Office].

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [the Branch of Hearings and Review] should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.”²

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on October 24, 2002. Furthermore, the record shows that the Office mailed appropriate notice to the claimant at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the criteria for abandonment as specified in Chapter 2.1601.6.e of the Office's procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

¹ 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. *Marilyn F. Wilson*, 51 ECAB 234, 235 (1999). The instant appeal was dated January 11, 2003 and postmarked January 13, 2003. As such, the Board does not have jurisdiction over the Office's January 2, 2002 merit decision.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999).

The November 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 9, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member