

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD E. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Oxnard, CA

*Docket No. 03-931; Submitted on the Record;
Issued September 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury causally related to his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in finding that appellant abandoned his request for a hearing before an Office hearing representative.

On April 15, 2002 appellant, then a 34-year-old custodian working in a modified position,¹ filed an occupational disease claim alleging that "on or about" March 19, 2002 he began having bilateral wrist and hand pain while performing his job duties. By letter dated May 14, 2002, the Office informed appellant of the type of evidence needed to support his claim. Appellant did not respond. By decision dated July 3, 2002, the Office denied appellant's claim on the grounds that he failed to establish fact of injury.

On July 10, 2002 appellant requested a hearing before the Branch of Hearings and Review of the Office. By letter dated December 20, 2002, the Office informed him that the hearing was scheduled for 10:00 a.m. on January 28, 2003 in Los Angeles, California. By decision dated February 7, 2003, the Office found that appellant abandoned his July 10, 2002 request for a hearing. The Office noted that the hearing had been scheduled for January 28, 2003, that appellant received written notification of the hearing 30 days in advance, that he failed to appear, and that the record contained no evidence that he contacted the Office to explain his failure to appear. The instant appeal follows.

The Board finds that appellant has not established that he sustained an injury causally related to factors of employment.

¹ The record indicates that, under file number 13-1208149, the Office had accepted that appellant sustained employment-related carpal tunnel syndrome, ulnar nerve damage and ganglion cyst. He had returned to work in the modified position on February 17, 2002 after a two-year absence, and the Office had determined that the rehabilitation job was suitable. The instant claim was adjudicated by the Office under file number 13-2051238.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

Although appellant filed a statement in which he identified the factors that he believed caused his condition, he submitted no medical evidence in support of his claim. By letter dated May 14, 2002, the Office informed him of the type evidence needed to support his claim, to include a comprehensive medical report from his treating physician. Appellant did not respond. The Board therefore finds that, as appellant submitted no medical evidence establishing the presence or existence of a disease or condition for which compensation was claimed that included a rationalized opinion that the diagnosed condition was causally related to the employment factors identified by appellant, he failed to meet his burden of proof to establish that he sustained an injury causally related to factors of employment.³

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

The legal authority governing abandonment of hearings rests with the procedure manual of the Office. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

“(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, H&R [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 DO [District Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

² *Solomon Polen*, 51 ECAB 341 (2000).

³ *Id.*

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R 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.

“This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”⁴

In the present case, the Office scheduled a hearing before an Office hearing representative at a specific time and place on January 28, 2003. The record shows that the Office mailed appropriate notice to appellant at his proper 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 conditions for abandonment specified in the Office’s procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.⁵

The decisions of the Office of Workers’ Compensation Programs dated February 7, 2003 and July 3, 2002 are hereby affirmed.

Dated, Washington, DC
September 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

⁵ *Claudia J. Whitten*, 52 ECAB 483 (2001).