

A.B.D. No. 90-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION APPEAL BOARD

OAL DKT #PRB-4105-89
AGENCY DKT #AB-89-11

CAROL NUTTO,

Petitioner,

v.

**COMMUNICATIONS WORKERS
OF AMERICA,**

Respondent.

Carol Nutto, petitioner pro se

Michael T. Leibig, Esq., for respondent

DECISION AND ORDER

On November 27, 1989, Administrative Law Judge Robert W. Scott entered an order dismissing a petition of appeal filed by Carol Nutto on account of the petitioner's failure to appear at a hearing scheduled for November 9, 1989. Petitioner did not submit an explanation of her nonappearance to Judge Scott within the 10-day period set by N.J.A.C. 1:1-14.4(a).

On December 5, 1989 the petitioner wrote to the Appeal Board to advise that her nonappearance was due to a serious illness which involved surgery at an out-of-state hospital. She also advised that she had agreed to a settlement of her case and was awaiting a settlement check from the respondent.

On December 28, 1989, counsel for the respondent wrote to the petitioner enclosing a copy of the settlement check. The letter was copied to Judge Scott and the Appeal Board and states that the case should be deemed settled and not be dismissed as having been abandoned.

Accordingly we remand the case to Judge Scott for the limited purpose of reviewing the settlement terms in accordance with N.J.A.C. 1:1.19.1.*

ORDER

The Initial Decision-Failure to Appear of Judge Scott is hereby reversed and the matter is remanded for proceedings pursuant to N.J.A.C. 1:1-19.1

BY ORDER OF THE APPEAL BOARD

WILLIAM L. NOTO
Chairman

Chairman Noto and Board Member Dorf voted in favor of this decision. None opposed. Board Member Verhage was not present.

DATED: TRENTON, NEW JERSEY
January 9, 1990

*Because the respondent has the burden of proof in Appeal Board cases, a petitioner is not required to appear at a hearing in order to maintain an appeal. See Calvin A. Dawe and CWA, A.B.D. No. 85-2, 10 NJPER 613 (¶15289 1984). However a petitioner who is given notice of a hearing should, if possible, advise the judge and all other parties of any intention not to appear. Under these circumstances petitioner's nonappearance was excusable.