

A.B.D. No. 90-6

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

OAL DKT #PRB-4103-89
AGENCY DKT #AB-89-7

CARMINE J. GRASSO,

Petitioner,

v.

**COMMUNICATIONS WORKERS
OF AMERICA,**

Respondent.

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 Carmine J. Grasso on account of the petitioner's failure to appear at a hearing scheduled for November 9, 1989. Petitioner did not submit an explanation of his nonappearance to Judge Scott within the 10-day period set by N.J.A.C. 1:1-14.4(a).

On December 29, 1989, counsel for the respondent wrote to the petitioner and Judge Scott that the case should be deemed as having been settled rather than abandoned. A copy of the letter was sent to the Appeal Board. The letter explained that the parties had agreed to have the petitioner's appeal governed by the ultimate outcome of other Appeal Board cases pending before a different Administrative Law Judge.

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.