

FACTUAL HISTORY

On September 21, 1990 appellant, then a 51-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 1990 she sustained a torn meniscus in her right knee when she stooped down to bathe a patient while in the performance of duty.² OWCP accepted her claim for right knee meniscus tear and subsequently expanded acceptance of the claim to include aggravation of bilateral osteoarthritis of the knees. It paid appellant wage-loss compensation on the periodic rolls, effective February 1, 1998.

In an April 14, 2022 letter, OWCP notified appellant that she was being referred for a second opinion examination on May 25, 2022 with Dr. Rafael Lopez, a Board-certified orthopedic surgeon, regarding her continuing disability and medical residuals due to the accepted September 8, 1990 employment injury. The letter informed appellant of her obligations to attend and cooperate with the examination and explained that her compensation benefits would be suspended for failure to report to, or for obstruction of, the examination, pursuant to 5 U.S.C. § 8123(d). The letter also contained the date, time, and location of her appointment and was mailed to her last known address of record in the ordinary course of business.

In an April 25, 2022 memorandum of telephone call (Form CA-110), OWCP noted that appellant indicated that she could not travel to Jacksonville, Florida for the second opinion evaluation. It advised her to contact QTC, the medical scheduler, to see if they could reschedule her appointment. Appellant noted that she did not want to reschedule the appointment, but she wanted an appointment that was closer to her.

On May 26, 2022 the medical scheduler advised OWCP that appellant did not attend the examination scheduled for May 25, 2022.

In a notice dated June 21, 2022, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for May 25, 2022. It afforded her 14 days to respond in writing with an explanation as to why she did not attend the examination with Dr. Lopez. OWCP advised appellant that, if good cause was not established, her compensation benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until she attended and fully cooperated with the examination. It instructed her to contact OWCP immediately if she intended to report to a rescheduled examination with Dr. Lopez.

In a statement dated June 30, 2022, appellant explained that when she received the April 2022 letter regarding an appointment with Dr. Lopez, she was experiencing excruciating pain in her knees, lower back, and left hip, and had difficulty moving. She indicated that she called the number on the letter and spoke with someone who said that she would try to get appellant a closer appointment.

² OWCP assigned the present claim OWCP File No. xxxxxx121. Appellant subsequently filed a Form CA-1 for a July 27, 1994 employment injury. It assigned that claim OWCP File No. xxxxxx147 and accepted it for left knee meniscus tear. OWCP has administratively combined OWCP File Nos. xxxxxx147 and xxxxxx121, with the latter serving as the master file.

By decision dated July 13, 2022, OWCP suspended appellant's wage-loss compensation and medical benefits, effective that date, pursuant to 5 U.S.C. § 8123(d), due to her failure, without good cause, to attend the medical examination scheduled for May 25, 2022.

LEGAL PRECEDENT

Section 8123 of FECA authorizes OWCP to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary.³ The determination of the need for an examination, the type of examination, the choice of locale, and the choice of medical examiners are matters within the province and discretion of OWCP.⁴ OWCP's regulations provide that a claimant must submit to an examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary.⁵ Section 8123(d) of FECA and OWCP regulations provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.⁶ OWCP's procedures provide that, before OWCP may invoke these provisions, the employee is to be provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.⁷ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.⁸

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective July 13, 2022, due to her failure to attend a scheduled medical examination.

In a letter dated April 14, 2022, OWCP notified appellant that she was being referred for a second opinion examination on May 25, 2022 with Dr. Lopez to determine the status of her employment-related injury. The letter sent to her last known address of record, informed her of her obligations to attend and cooperate with the examination, and explained that her compensation benefits would be suspended for failure to report to, or for obstruction of, the examination. The letter also contained the date, time, and location of appellant's appointment.

³ 5 U.S.C. § 8123.

⁴ See *Q.V.*, Docket No. 21-1188 (issued May 26, 2022); *R.D.*, Docket No. 20-1551 (issued November 8, 2021); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

⁵ 20 C.F.R. § 10.320.

⁶ 5 U.S.C. § 8123(d); see also *id.* at § 10.323; *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

⁸ *Id.* at Chapter 2.810.13e.

Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule.⁹ The April 14, 2022 letter was sent to appellant's last known address of record and is presumed to have been received by her absent any notice of nondelivery. She has not submitted evidence to rebut this presumption. Appellant did not appear for the May 25, 2022 appointment.¹⁰

In its June 21, 2022 notice, OWCP provided appellant 14 days to submit a valid reason for her failure to attend the scheduled medical appointment on May 25, 2022. In a June 30, 2022 response, appellant submitted a statement indicating that she did not attend the appointment because she was in excruciating pain, and explained that she contacted the medical scheduler about arranging an examination that was closer to her. While these documents were received within 14 days of the proposed notification of suspension, they do not constitute good cause for refusing to attend the scheduled appointment.¹¹ For this reason, the Board finds that she has not established good cause for failing to appear for the scheduled examination on May 25, 2022.

As appellant did not attend the second opinion examination as scheduled, and failed to provide good cause for failing to appear within 14 days of OWCP's June 21, 2022 notice of proposed suspension, the Board finds that OWCP properly suspended her wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d), effective July 13, 2022.¹²

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective July 13, 2022, due to her failure to attend a scheduled medical examination.

⁹ See *James A. Gray*, 54 ECAB 277 (2002).

¹⁰ See *Q.V.*, Docket No. 21-1188 (issued May 26, 2022).

¹¹ See *A.H.*, Docket No. 21-0688 (issued October 6, 2021); see also *R.C.*, Docket No. 09-2328 (issued July 12, 2010).

¹² See *R.T.*, Docket No. 20-0933 (issued July 29, 2022); *A.H.*, Docket No. 21-0688 (issued October 6, 2021); *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board