

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
H.S., Appellant)	
)	
and)	Docket No. 23-0106
)	Issued: May 24, 2023
DEPARTMENT OF THE NAVY,)	
COMMANDER U.S. PACIFIC FLEET,)	
Long Beach, CA, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 27, 2022 appellant filed a timely appeal from a September 26, 2022 merit decision of the Office of Workers' Compensation Programs OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 26, 2022 decision and on appeal, a pellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on a appeal. *Id.*

ISSUE

The issue is whether OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective September 26, 2022, due to her failure to attend a scheduled medical examination.

FACTUAL HISTORY

On February 24, 1981 appellant, then a 30-year-old clerk typist, filed a traumatic injury claim (Form CA-1) alleging that on February 19, 1981 she lost her balance when seated at a desk and struck her right hand against the corner of a file cabinet while in the performance of duty. She stopped work on the date of injury, returned to duty on June 30, 1981. Appellant stopped work again on July 29, 1981 and did not return. On September 2, 1981 she underwent surgery for excision of a right ganglion of her right hand and wrist. OWCP accepted the claim for contusion to the right hand and wrist, right wrist sprain and ganglion cyst, reflex sympathetic disorder of the right upper extremity, and major depression. The record indicates that OWCP accepted appellant's wage-loss compensation on the periodic rolls as of June 16, 2002.

In a March 15, 2022 letter, OWCP notified appellant that she was being referred for a second opinion examination on April 22, 2022 with Dr. Heather L. Holder, a psychologist, to evaluate the status of her accepted condition. 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 were mailed to her last known address of record in the ordinary course of business.

On April 27, 2022 the medical scheduler advised OWCP that appellant did not attend the examination scheduled for April 22, 2022.

In a notice dated May 24, 2022, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits because she failed to attend the medical examination scheduled for April 22, 2022. It afforded her 14 days to respond in writing with an explanation as to why she did not attend the examination with Dr. Holder. 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. Holder.

Appellant did not respond in writing within the afforded period, and did not indicate that she intended to report to a rescheduled examination.

By decision dated September 26, 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 April 22, 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 September 26, 2022, due to her failure to attend a scheduled medical examination.

In a March 15, 2022 letter, OWCP notified appellant that she was being referred for a medical examination on April 22, 2022 with Dr. Holder. The letter informed her of her obligation 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.

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 March 15, 2022 letter was sent to appellant's last known address of record and is presumed to have

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; *Q.V.*, *supra* note 4; *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.

⁹ See *Q.V.*, *supra* note 4; *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *James A. Gray*, 54 ECAB 277 (2002); *Claudia J. Whitten*, 52 ECAB 483 (2001).

been received by her absent any notice of nondelivery. Appellant has not submitted evidence to rebut this presumption.

Appellant did not appear for the April 22, 2022 appointment, nor did she attempt to reschedule the appointment prior to the designated time. In a notice dated May 24, 2022, OWCP provided her 14 days to submit a valid reason in writing for her failure to attend the scheduled medical appointment. Appellant did not respond in writing.¹⁰

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 May 24, 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 September 26, 2022.¹¹

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 September 26, 2022, due to her failure to attend a scheduled medical examination.

¹⁰ See *S.Y.*, Docket No. 15-1313 (issued November 2, 2015); *M.B.*, Docket No. 10-1755 (issued March 24, 2011); *B.P.*, Docket No. 10-1205 (issued February 22, 2011); *S.B.*, 58 ECAB (2007) (the claimant did not timely respond in writing to the notice of proposed suspension or indicate willingness to reschedule to undergo the medical appointment).

¹¹ See *Q.V.*, *supra* note 4; *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 September 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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