U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA K. CORREA and U.S. POSTAL SERVICE,
POST OFFICE, New York, N.Y.

Docket No. 96-2555; Submitted on the Record;
Issued July 9, 1998

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation benefits effective July 15, 1996 on the grounds that she failed to attend a scheduled medical examination.

On June 23, 1995 appellant, then a 34-year-old letter carrier, sustained an injury to her lower back when she bent down to pick up a tub of bulk mail. Initial medical treatment was rendered at Flushing Medical Center on June 24, 1995, where x-rays of the lumbar spine were taken. Her private physician, Dr. Michael G. Dempsey, who is Board-certified in physical medicine and rehabilitation, began treating appellant for her back condition on June 26, 1995. The Office accepted her claim for lumbosacral sprain. Appellant received benefits, including periodic compensation for wage loss.

Appellant filed a notice of recurrence of disability commencing July 21, 1995 due to continued lower back pain. She stopped work on July 27, 1995 and returned to work on limited duty for four hours per day effective September 13, 1995.[1]

[1] Appellant's limited-duty capacity was determined by the September 8, 1995 medical report of Dr. Lennart C. Belok, a Board-certified internist. On September 8, 1995 Dr. Belok noted appellant's symptoms from the original injury and her current complaints. He additionally set forth the findings of his neurological examination. Based on his examination, Dr. Belok opined that appellant has evidence for recurrent post-traumatic cervical paraspinal muscle strain and spasm and that she may also have a cervical radiculopathy or suprascapular nerve involvement. Dr. Belok also stated that there was evidence for moderately severe lumbosacral paraspinal muscle strain and spasm with symptoms and findings suggestive of a lumbosacral radiculopathy. He recommended additional electrophysiological testing. Dr. Belok opined that, given the history of the original injury, appellant's symptoms were directly related to the job accident. He additionally opined that appellant was partially disabled and recommended that she return to work four hours a day with restrictions to avoid lifting, pushing or pulling no more than five pounds. He stated that desk work would be preferable. A magnetic resonance imaging (MRI) scan of the lumbosacral spine taken on September 21, 1993 noted a straightening of the lumbar lordosis, compatible with muscle spasm and bulging discs at L2-3, L3-4 and L4-5 with resultant mild canal stenosis. At L5-S1, a bulging disc was seen without stenosis.

By letter dated May 14, 1996, appellant was advised that an appointment had been scheduled for examination on May 29, 1996 by a Dr. John Mazella, a Board-certified orthopedic surgeon. Appellant was advised that it was imperative for her to attend this appointment, as continuation of benefits may be effected.

By letter dated May 16, 1996, the Office advised appellant that an appointment had been scheduled for her examination by Dr. Matthew Garfinkel, an orthopedic surgeon, on May 23, 1996. Appellant was requested to submit her travel voucher to the Office for payment. Appellant was advised that this referral was made pursuant to section 8123 of the Act and that if she refused to submit to or obstructed the examination, her right to compensation would be suspended.

In a telephone memorandum dated May 17, 1996, an Office coordinator noted that appellant received two second opinion appointments and wanted to select the May 29, 1996 appointment with Dr. Mazella as it was closer to her home. The Office coordinator called appellant and left a message with her husband that the May 23, 1996 appointment with Dr. Garfinkel was to be kept.

By letter dated May 20, 1996, which the Office sent via overnight delivery, the Office informed appellant that the appointment on May 29, 1996 was made in error and that appellant's May 23, 1996 appointment with Dr. Garfinkel had been reinstated. The Office informed appellant that she should not attend work that day and attend the appointment. The Office additionally informed appellant that she should contact Dr. Garfinkel's office directly to obtain directions. The Office advised appellant that she should file Form CA-8 to be compensated for the four hours of pay she would lose from work. The Office advised appellant that if she failed to attend the examination and her excuse was that she did not know how to get there, her benefits could be terminated for refusal to undergo a medical examination ordered by the Office.

By letter dated May 21, 1996, the Office noted that, despite their notice to appellant of the fact that her failure to keep the May 23, 1996 examination would be considered an obstruction by the Office, appellant telephoned the Office and indicated that she would not attend the May 23, 1996 scheduled examination, but would attend the examination which was erroneously scheduled on May 29, 1996. The reasons provided were that the location of the May 29, 1996 examination was more convenient, she did not know how to get to Brooklyn (where the May 23, 1996 examination was) and that she worked on Thursdays (the day of the May 23, 1996 examination). The Office explained why appellant's explanations for not attending the May 23, 1996 were not reasonable, and advised appellant that if she did not attend the examination, her right to compensation would be suspended 14 days from the date of the scheduled examination for refusal to undergo an examination ordered by the Office. The Office further advised appellant that if she had another reason for not attending the examination such reason must be received within 14 days of the date of the examination, and if it was not deemed reasonable, her benefits would be suspended without prior notice.

In a letter dated May 22, 1996, appellant stated that the Office scheduled two appointments, one in Manhattan on May 29, 1996 and the other in an area she was unfamiliar with, Brooklyn, on May 23, 1996. Appellant stated that her injury compensation specialist at work advised her to pick one appointment and that she would communicate appellant's response. Appellant stated that she declined the May 23, 1996 appointment in Brooklyn because "of the commute to an area she is unfamiliar with." Appellant further stated that she would save the

Department of Labor $177.00 by going to a doctor's appointment on her day off in an area she is familiar with, instead of on company time and being reimbursed to take a cab to and from Brooklyn. Appellant indicated that she had no qualms about seeing a Department of Labor doctor, but wanted to do so in an area she was familiar with.

By decision dated July 15, 1996, the Office suspended appellant's compensation benefits, as of July 15, 1996, on the grounds that appellant obstructed a medical examination by failure to attend the May 23, 1996 scheduled appointment.

The Board finds that the Office properly suspended appellant's compensation benefits effective July 15, 1996 on the grounds that she failed to attend a scheduled medical examination.

Section 8123(d) of the Act authorizes the Office to require an employee who claims disability as a result of federal employment to undergo a physical examination as it deems necessary.[2] The Act provides as follows:

> "If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of refusal or obstruction is deducted from the period for which compensation is payable to the employee."[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 the Office.[4] The only limitation on this authority is that of reasonableness.[5] The Office's regulation, 20 C.F.R. § 10.407(a), provides that an injured employee "shall be required to submit to examination by a U.S. Medical Officer or by a qualified private physician approved by the Office as frequently and at such times and places as in the opinion of the Office may be reasonably necessary."

In the present case, the record establishes that appellant was working in a limited-duty capacity due to her back condition. To determine the extent and degree of appellant's impairment, the Office referred appellant to Dr. Garfinkel, an orthopedic surgeon, on May 23, 1996 for a second opinion examination. The Office scheduled an appropriate medical examination and notified appellant of the applicable sanctions should she not appear for the examination. Although the Office had erroneously scheduled another examination for May 29, 1996, appellant was advised of this scheduling error in a telephone call which her husband received on May 17, 1996 and in a letter dated May 20, 1996, which the Office had sent via overnight delivery to appellant. Appellant was again specifically advised by the Office to attend the May 23, 1996 examination.

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[2] 5 U.S.C. § 8123(d).

[3] *Id. See also* 20 C.F.R. § 10.407(b).

[4] *James C. Talbert*, 42 ECAB 974 (1991).

[5] *Raymond J. Hubenak*, 44 ECAB 395 (1993).

Despite notification that appellant's failure to attend the May 23, 1996 examination would be considered an obstruction by the Office, appellant canceled the May 23, 1996 examination. In a May 21, 1996 letter, the Office noted appellant's cancellation and that her reasons for refusing to attend the examination were not reasonable. The Office followed proper procedures [6] by advising appellant that she was to submit in writing the reasons for failing to undergo the scheduled appointment, within 14 days. Appellant responded that she had canceled the May 23, 1993 appointment because she was unfamiliar with the area where the doctor was located.

The Board finds that appellant's stated reason for canceling the scheduled examination does not constitute good cause. The Board notes that appellant had been advised by the Office that her costs of travel to the physician's office would be reimbursed by the Office. The Board further notes that the Office advised appellant to contact Dr. Garfinkel's office for directions. The Board additionally notes that the Office advised appellant in its letter of May 21, 1996 that her explanations for not attending the May 23, 1996 examination were not reasonable. Given the fact that appellant was advised as early as May 17, 1996 that the appointment made on May 29, 1996 was in error and that she was to keep the May 23, 1996 appointment, the Board finds that appellant has not provided good cause for failing to undergo the May 23, 1996 medical examination and that the Office properly suspended appellant's compensation benefits for refusal to submit to a medical examination.

The decision of the Office of Workers' Compensation Programs dated July 15, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 9, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (April 1993).