

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAURIE L. SKOLASKI and U.S. POSTAL SERVICE,  
POST OFFICE, Madison, WI

*Docket No. 00-468; Submitted on the Record;  
Issued January 12, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's right to compensation for obstructing a medical examination.

The Board finds that the Office properly suspended appellant's right to compensation for obstructing a medical examination.

Section 8123(a) of the Federal Employees' Compensation Act<sup>1</sup> authorizes the Office to require an employee who claims compensation for an employment injury to undergo such physical examinations as it deems necessary. The determination of the need for an examination, the type of examination, the choice of local and the choice of medical examiners are matters within the province and discretion of the Office. The only limitation on this authority is that of reasonableness.<sup>2</sup> Section 8123(d) of the Act provides that, "[i]f an employee refuses to submit to or obstructs an examination, [her] right to compensation is suspended until refusal or obstruction stops."<sup>3</sup> If an employee fails to appear for an examination, the Office must ask the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination.<sup>4</sup>

On September 19, 1997 appellant, then a 30-year-old clerk, sustained an employment-related left shoulder strain. The Office later accepted that appellant sustained an employment-related impingement syndrome of her left shoulder and authorized the performance of a left subacromial decompression in August 1998. Appellant received compensation for periods of disability. She returned to light-duty work for the employing establishment on November 11,

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<sup>1</sup> 5 U.S.C. § 8123(a).

<sup>2</sup> See *Dorine Jenkins*, 32 ECAB 1502, 1505 (1981).

<sup>3</sup> 5 U.S.C. § 8123(d); see 20 C.F.R. § 10.323.

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14 (April 1993).

1998 and continued to receive compensation for partial disability. By decision dated January 21, 1991, the Office suspended appellant's right to compensation for obstructing a medical examination. By decision dated September 20, 1999, the Office affirmed its January 21, 1999 decision.

The Board has reviewed the evidence of record and finds that appellant obstructed a medical examination within the meaning of section 8123 of the Act.

By letter dated December 15, 1998, the Office advised appellant that she was to appear for an examination scheduled at 10:45 a.m. on December 28, 1998 with Dr. Anoo P. Patel, a Board-certified orthopedic surgeon serving as an Office referral physician. The Office informed appellant that it must advise it in writing within seven days of the appointment if she could not keep the appointment and that she must provide reasons with such notification.<sup>5</sup> The Office informed appellant that failure to provide an acceptable reason for not appearing for the examination would result in suspension of her benefits in accordance with section 8123 of the Act. The record contains a facsimile cover sheet, dated December 24, 1998, which was sent from an employing establishment official to an Office medical management assistant. The document contained the notation, "Employee unable to attend scheduled appointment on December 28, 1998. Working full duty -- does not think the examination is warranted."<sup>6</sup>

Appellant did not appear for the examination scheduled for December 28, 1998. By letter dated January 5, 1999, the Office advised appellant of an examination with Dr. Patel which had been rescheduled for January 11, 1999 at 2:45 p.m. The Office again advised appellant about the consequences of failing to appear for a scheduled examination. By notice dated January 6, 1999, the Office informed appellant of a proposed suspension of compensation for obstruction of an examination. The Office advised appellant that she had 14 days to present in writing her reasons for not appearing at the examination scheduled for December 28, 1998 with Dr. Patel. The Office indicated that, if good cause was established within this time period, her entitlement to compensation would be suspended in accordance with section 8123 of the Act. Appellant did not appear for the examination scheduled for January 11, 1999.<sup>7</sup>

Prior to issuing its January 21, 1999 decision suspending appellant's compensation, the Office complied with its procedural requirements by providing appellant with 14 days to provide good cause for her failure to appear at the examination scheduled for December 28, 1998 by submitting a written explanation containing her reasons for the failure to appear. Despite being advised of the consequences of not doing so, appellant failed to comply with the Office's request

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<sup>5</sup> The Office stated, "Only legitimate, documented emergencies will be deemed as adequate grounds for not keeping the appointment."

<sup>6</sup> It is unclear when this document was included in the record.

<sup>7</sup> The record contains an annotated copy of the Office's January 6, 1999 notice which was received by the Office on October 19, 1999. The annotation, presumably by appellant, provided, "In response to this letter, I will not be able to go to [the January 11, 1999] appointment. I need to be at my son's school at 3:00 [p.m.] I am back to work with no restrictions and am doing fine."

to provide a written explanation establishing good cause for her failure to appear on December 28, 1998.<sup>8</sup>

Appellant alleged that she did not receive any documents from the Office other than the December 15, 1995 letter. However, each of the Office's letters was properly addressed and mail in the ordinary course of business and other evidence or record, including the annotated January 6, 1999 letter, shows that appellant received later letters from the employing establishment.<sup>9</sup>

For these reasons, the Office properly suspended appellant's right to compensation for obstructing a medical examination.

The decisions of the Office of Workers' Compensation Programs dated September 20 and January 21, 1999 are affirmed.

Dated, Washington, DC  
January 12, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> Neither the facsimile cover sheet, dated December 24, 1998, or the annotated copy of the January 6, 1999 letter satisfied this requirement with respect to appellant's failure to appear at the examination scheduled for December 28, 1998. Moreover, it should be noted that appellant failed to appear for the examination scheduled for January 11, 1999.

<sup>9</sup> It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *George F. Gidicsin*, 36 ECAB 175, 178 (1984). Appellant did not submit evidence to rebut this presumption.