



she was hit by a heavy bag. By letter dated June 25, 2003, the Office accepted appellant's claim for right ankle sprain and paid appropriate compensation benefits.

On or about February 14, 2005, the Office referred appellant to Baybrook Medical Services for a second opinion orthopedic examination to address the relationship between her current condition and the April 19, 2003 employment injury and to determine the extent and degree of any disability remaining as a result of the injury.<sup>1</sup> The Office informed appellant of her responsibility to attend the appointment and that, if she failed to do so without an acceptable reason, her compensation benefits could be suspended in accordance with section 8123(d) of the Federal Employees' Compensation Act.<sup>2</sup> By letter dated March 1, 2005, Baybrook Medical Services referred appellant to Dr. Philip R. Lozman, a Board-certified orthopedic surgeon, for a medical examination at 1:30 p.m. on March 22, 2005. Appellant did not attend the March 22, 2005 appointment with Dr. Lozman.

On March 22, 2005 the Office notified appellant that it proposed to suspend her compensation under 5 U.S.C. § 8123(d) on the grounds that she did not keep the appointment scheduled with Dr. Lozman on March 22, 2005. The Office gave appellant 14 days to provide a written explanation showing good cause for her failure to attend the appointment. No timely response was received by the Office.

By decision dated April 11, 2005, the Office suspended appellant's compensation benefits under section 8123(d) on the grounds that she did not attend the March 22, 2005 scheduled appointment with Dr. Lozman. The Office noted that appellant had not provided a written explanation of her failure to attend or cooperate with Dr. Lozman.<sup>3</sup>

### **LEGAL PRECEDENT**

Section 8123(a) of the Act<sup>4</sup> authorizes the Office to require an employee who claims compensation as the result of an injury due to his or her federal employment to undergo such physical examinations as it deems necessary.<sup>5</sup> The determination of the need for an examination, the type of examination, the choice of the locale and the choice of medical examiners are matters within the discretion of the Office.<sup>6</sup> A time must be set for a medical examination and the employee must fail to appear for the appointment, without an acceptable excuse or reason, before the Office can suspend or deny the employee's entitlement to compensation on the grounds that

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<sup>1</sup> The Board notes that, although the actual referral letter is undated, it was associated with the case record on February 14, 2005.

<sup>2</sup> 5 U.S.C. § 8123(d).

<sup>3</sup> The Board notes that appellant submitted additional evidence to the record following the Office's April 11, 2005 decision on appeal. The Board's jurisdiction is limited to a review of evidence, which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *Anthony H. Jackson*, 53 ECAB 529 (2002).

the employee failed to submit to or obstructed a medical examination.<sup>7</sup> Office regulations provide that an employee must submit to examination by a qualified physician as often and at such times and places as the Office considers reasonably necessary.<sup>8</sup> The only limitation on this authority is that of reasonableness.<sup>9</sup> Section 8123(d) of the Act provides that, if an employee refuses to submit to or obstructs an examination, his or her right to compensation is suspended until the refusal or obstruction stops.<sup>10</sup> The Board has interpreted the plain meaning of section 8123(d) to provide that compensation is not payable while a refusal or obstruction of an examination continues.<sup>11</sup>

Office procedures provide that, if the claimant does not report for a scheduled appointment, he or she should be asked in writing to provide an explanation within 14 days. If good cause is not established, entitlement to compensation should be suspended in accordance with section 8123(d) until the date on which the claimant agrees to attend the examination. The agreement may be expressed in writing or by telephone. When the claimant actually reports for an examination, payment retroactive to the date on which the claimant agreed to attend the examination may be made.<sup>12</sup>

### ANALYSIS

In this case, the Office suspended appellant's compensation under section 8123(d) of the Act on the grounds that she failed to attend a medical examination ordered by the Office. The Board finds that the suspension in this case was proper.

In a letter sent on or about February 14, 2005, the Office informed appellant that she had been scheduled for a second opinion orthopedic examination at Baybrook Medical Services to determine the relationship, if any, between her claimed condition and the April 19, 2003 employment injury and the extent and degree of any employment-related disability. At that time, the Office properly informed appellant of the consequences of her failure to appear at this appointment. On March 1, 2005 the exact time and place of the appointment were provided to appellant through a letter from Dr. Lozman's office. Appellant did not attend the appointment. On March 22, 2005 the Office gave appellant 14 days to provide a written explanation showing good cause for failing to attend the appointment. However, no response was timely filed. Accordingly, the Board finds that the Office correctly determined that appellant failed to submit

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<sup>7</sup> *Maura D. Fuller (Judson H. Fuller)*, 54 ECAB \_\_\_\_ (Docket No. 02-625, issued January 28, 2003).

<sup>8</sup> 20 C.F.R. § 10.320.

<sup>9</sup> *Anthony H. Jackson*, *supra* note 6.

<sup>10</sup> 5 U.S.C. § 8123(d).

<sup>11</sup> *Alfred H. Anderson*, 54 ECAB \_\_\_\_ (Docket No. 02-1417, issued November 5, 2002).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000); *see Anthony H. Jackson*, *supra* note 6.

to a properly scheduled medical examination without good cause and suspended her right to compensation.<sup>13</sup>

**CONCLUSION**

The Board finds that the Office properly suspended appellant's compensation under section 8123(d) of the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 11, 2005 is affirmed.

Issued: October 18, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> 5 U.S.C. § 8123(d); *Maura D. Fuller*, *supra* note 7.