United States Department of Labor
Employees' Compensation Appeals Board

W.L., Appellant	)	
and	)	**Docket No. 08-1019**
	)	**Issued: August 25, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Salisbury, NC, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 21, 2008 appellant filed a timely appeal from a December 10, 2007 decision of the Office of Workers' Compensation Programs, suspending his compensation benefits, and a February 12, 2008 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case

ISSUES

The issues are: (1) whether the Office properly suspended appellant's right to compensation benefits effective December 10, 2007 on the grounds that he failed to attend a directed medical examination; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On February 23, 2001 appellant, then a 60-year-old housekeeping aid, filed a traumatic injury claim alleging that he injured his back and left side when he fell off a ladder. The Office

accepted his claim for a spine compression fracture at L3. Appellant was placed on the periodic compensation rolls for temporary disability as of April 9, 2001. He continued to be treated by Dr. Ranjan S. Roy and Dr. David S. Jones, both neurosurgeons. Effective July 1, 2001, appellant was removed from his federal position for cause because he failed to comply with employing establishment regulations regarding leave requests.

On November 12, 2003 the Office referred appellant, together with a statement of accepted facts and list of questions, to Dr. Surendrapal S. Mac, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether he had any remaining disability or medical condition causally related to his February 23, 2001 compression fracture. On December 5, 2003 Dr. Mac reviewed the medical history and provided findings on physical examination. He stated that an x-ray taken that date revealed a healed compression fracture at L3. Dr. Mac found that appellant's accepted compression fracture was healed but he had some remaining disability due to degenerative changes in the spine caused by the compression fracture.

On December 1, 2004 and February 23, November 6 and December 6, 2006 the Office requested that appellant provide updated medical reports from his treating physician. There was no response to the letters.

On September 13, 2007 the Office advised appellant that he was to report to Dr. William A. Somers, an orthopedic surgeon, on October 24, 2007 at 11:00 A.M., at the address provided, for a medical examination to determine whether he had any remaining disability or medical condition causally related to his February 23, 2001 compression fracture. The Office advised appellant that if he failed to keep the appointment and did not provide an acceptable reason for not attending, his benefits would be suspended pursuant to section 8123(d) of the Federal Employees' Compensation Act.[1] On October 24, 2007 Dr. Somers' office staff advised the Office that appellant failed to keep the scheduled appointment.

On October 30, 2007 the Office advised appellant that it proposed to suspend his compensation benefits pursuant to section 8123(d) of the Act for failure to attend the examination scheduled with Dr. Somers for October 24, 2007, as directed in the September 13, 2007 Office letter. He was given 14 days to provide an explanation for his failure to attend the scheduled appointment. There was no response.

By decision dated December 10, 2007, the Office finalized its suspension of appellant's compensation benefits.

On February 1, 2008 appellant requested reconsideration. He provided no additional evidence or argument.

By decision dated February 12, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

[1] 5 U.S.C. §§ 8101-8193.

LEGAL PRECEDENT – ISSUE 1

Section 8123 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 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.[3] The Office's federal regulation at section 10.320 provides that a claimant must submit to examination by a qualified physician as often and at such times and places as the Office considers reasonably necessary.[4] Section 8123(d) of the Act and section 10.323 of the Office's 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.[5] Office procedures provide that, before the Office may invoke these provisions, the employee is to be afforded a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.[6] If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of the Act.[7]

ANALYSIS -- ISSUE 1

By letter dated September 13, 2007, the Office referred appellant to Dr. Somers for an examination and evaluation as to whether he had any residual disability or medical condition causally related to his February 23, 2001 employment injury. The Office advised him that the examination was scheduled for October 24, 2007 at 11:00 A.M. and provided Dr. Somers' address. It advised appellant that his compensation benefits would be suspended if he missed the appointment and did not provide an acceptable reason for failing to attend. On October 24, 2007 Dr. Somers' office staff advised the Office that appellant failed to appear for the scheduled appointment. On October 30, 2007 the Office advised appellant that it proposed to suspend his compensation benefits, pursuant to section 8123(d) of the Act, for failure to attend the examination scheduled with Dr. Somers for October 24, 2007, as directed by the Office in its September 13, 2007 letter. It gave him 14 days in which to provide an explanation for his failure to attend the scheduled appointment. Appellant did not respond to the October 30, 2007 letter of proposed suspension. He provided no explanation for his failure to attend the October 24, 2007 directed examination with Dr. Somers. Because appellant failed to attend the directed medical examination and did not provide good cause for the failure within 14 days of the Office's

[2] 5 U.S.C. § 8123.

[3] *See Lynn C. Huber*, 54 ECAB 281 (2002).

[4] 20 C.F.R. § 10.320.

[5] 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323; *see Alfred R. Anderson*, 54 ECAB 179 (2002).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

[7] *Id.*

October 30, 2007 notice of proposed suspension, the Office properly suspended his compensation benefits as of December 10, 2007.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[8] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by setting forth arguments that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[9] When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[10]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the December 10, 2007 decision but provided no evidence or legal argument in support of his request. Neither did he contend that the Office erroneously applied or interpreted a specific point of law. Because appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law, advancing a relevant legal argument not previously considered or constituting relevant and new pertinent evidence not considered previously by the Office, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office properly suspended appellant's compensation benefits effective December 10, 2007 for failure to attend a directed medical examination. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

[8] 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.606(b)(2).

[10] 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 12, 2008 and December 10, 2007 are affirmed.

Issued: August 25, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board