

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

T.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 08-2456
Issued: June 19, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 8, 2008 appellant filed a timely appeal from a September 2, 2008 decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated June 16, 2008, the Board found that appellant established his regular job duties included targets, productivity issues, mandatory inspections, hazmat and Hazwoper talks, grievance activity, predisciplinary meetings, 2608s, accident packages, authorization of overtime, correction of clock ring errors, work-hour budget hours and VOE surveys. The case was remanded for the Office to further develop the

medical evidence and issue an appropriate decision on the merits of the claim.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

On remand the Office prepared a statement of accepted facts and a set of questions. In notices dated July 3 and 8, 2008, the Office informed appellant that an examination had been scheduled with Dr. Hadi Tajani, a Board-certified psychiatrist, for July 23, 2008.

By letter dated July 15, 2008, appellant stated that it was “unbelievable” that the Office would schedule a second opinion evaluation as the Board had rendered a favorable decision. He contended that the reports of his physicians, Dr. Paul Schorr and Dr. Linus Miller, were sufficient to establish his claim. On July 20, 2008 appellant filed a Form CA-7, claim for compensation, for the period April 12 to September 25, 2007. He did not attend the scheduled examination, and on July 29, 2008, the Office proposed to suspend compensation under section 8123(d) of the Federal Employees’ Compensation Act.² Appellant was given 14 days to show good cause for his failure to attend the examination. In a letter dated July 31, 2008, he stated that he had previously provided good cause for his failure to attend the scheduled examination.

By decision dated September 2, 2008, the Office denied appellant’s claim on the grounds that he failed to attend the scheduled July 23, 2008 examination with Dr. Tajani.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.³

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.⁴ 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.⁵ Section 10.320 of Office regulations provides that a claimant must submit to examination by a qualified physician as often and at such time and places as the Office considers reasonably necessary.⁶ Section 8123(d) of the Act and section 10.323 of Office regulations provide that, if an employee refuses to submit to or obstructs a directed medical

¹ Docket No. 07-1926 (issued June 16, 2008).

² 5 U.S.C. §§ 8101-8193.

³ *Ronald K. Jablanski*, 56 ECAB 616 (2005).

⁴ 5 U.S.C. § 8123(a).

⁵ *S.B.*, 58 ECAB ____ (Docket No. 06-1838, issued January 11, 2007).

⁶ 20 C.F.R. § 10.320; *see Dana D. Hudson*, 57 ECAB 298 (2006).

examination, his or her compensation is suspended until the refusal or obstruction ceases.⁷ Office procedures provide that before the Office 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.⁸ 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.⁹

ANALYSIS

Appellant's claim for a stress-related condition has not been accepted. In the June 16, 2008 decision, the Board found compensable factors of employment and remanded the case to the Office to analyze and develop the medical evidence as necessary.¹⁰ Both the Act and Office regulations provide that a claimant must submit to examination by a qualified physician as often and at such time and place the Office deems necessary.¹¹ The Board has long held that 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.¹²

Following remand by the Board, the Office appropriately undertook further development of appellant's claim and scheduled an appointment with Dr. Tajani, a Board-certified psychiatrist. The Office's action in requesting appellant to undergo a second opinion evaluation to determine if his condition was causally related to the compensable employment factors was reasonable.¹³ By a June 27, 2008 letter, the Office properly notified appellant of his responsibilities regarding the scheduled medical examination including that his benefits could be suspended under section 8123(d) of the Act for failure to report. The July 3 and 8, 2008 letters appropriately directed appellant to report for a second opinion evaluation on July 23, 2008. Appellant failed to appear for the examination on the scheduled date. After he failed to report for examination on July 29, 2008 the Office gave him 14 days to explain his failure to attend in writing. Appellant merely questioned the validity of being referred for a second opinion evaluation and provided no reason for his failure to attend. As noted, the Act requires a claimant to submit to an Office-directed examination as requested.¹⁴ The Board finds that appellant did not submit evidence to show that he was unable to attend the scheduled appointment or provide

⁷ 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323; *see Sharon Handy*, 57 ECAB 446 (2006).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 1.820.14(d) (July 2000).

⁹ *Id.*; *see J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008).

¹⁰ *Supra* note 1.

¹¹ 5 U.S.C. § 8123; 20 C.F.R. § 10.320.

¹² *S.B.*, *supra* note 5.

¹³ *Id.*

¹⁴ *Supra* note 12; *see E.B.*, 59 ECAB ____ (Docket No. 07-1618, issued January 8, 2008).

adequate reasons for not complying. Appellant did not establish good cause for refusing to submit to the scheduled examination.¹⁵

The Board will however modify the September 2, 2008 Office decision to reflect that appellant's entitlement to compensation benefits are suspended rather than his claim denied.

CONCLUSION

The Board finds that appellant failed to attend a medical examination as scheduled by the Office without good cause. Appellant claim for benefits is suspended under section 8123.¹⁶

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2008 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: June 19, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ See *J.T.*, *supra* note 9.

¹⁶ See *Thomas L. Grimm*, Docket No. 95-954 (issued January 15, 1997).