

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on July 8, 1980 appellant, then a 31-year-old machine tool operator helper, sustained a lumbar strain and herniated lumbar disc due to a fall at work.² Appellant stopped work on July 8, 1980 and received compensation for total disability.

In a January 12, 2011 letter, OWCP advised appellant that a second opinion examination by a specialist in the field of psychiatry was necessary to evaluate his case.³ It advised him that, if he did not provide an acceptable reason for missing a scheduled appointment or if he obstructed an evaluation, his benefits would be suspended in accordance with section 8123(d) of FECA which provides that, if an employee refuses to submit to or obstructs an examination, his right to compensation is suspended until the refusal or obstruction stops. The letter was sent to appellant's address of record.⁴

In a January 27, 2011 letter, OWCP directed appellant to report for a second opinion examination to be conducted at 9:10 a.m. on March 23, 2011 by Dr. Henry P. Hare, Jr., a Board-certified psychiatrist.⁵ This letter was also sent to appellant's address of record.

In a March 24, 2011 letter, Dr. Hare's office advised OWCP that appellant did not keep the appointment scheduled for March 23, 2011.

In a March 28, 2011 letter, OWCP informed appellant of its proposed suspension of his compensation, under section 8123(d) of FECA, for failure to submit to the medical examination scheduled for March 23, 2011 with Dr. Hare.⁶ It stated:

“When a claimant refuses to attend or cooperate with a medical examination required by this office, all compensation benefits, including medical expenses, are suspended.... If you believe that you have a valid reason for failing to submit to or cooperate with the scheduled examination, you must submit, in writing, your reasons, with supporting evidence, **within 14 days of the date of this letter**. If you do not show good cause, your entitlement to compensation will be suspended under 5 U.S.C. [§] 8123(d) until after you attend and fully cooperate with the examination.” (Emphasis in the original.)

In an April 12, 2011 decision, OWCP suspended appellant's compensation effective May 8, 2011 for failure to submit to the medical examination scheduled for March 23, 2011 with

² OWCP later accepted that appellant sustained aggravation of preexisting schizophrenia as a consequence of his 1980 work injury.

³ The last medical evidence of record was from June 2005.

⁴ The record reveals that this had been appellant's address of record since at least January 2000. In a EN1032 form completed on April 15, 2010, appellant listed the same address.

⁵ The letter listed the location of Dr. Hare's office.

⁶ The letter was sent to appellant's address of record.

Dr. Hare. It found that appellant did not attend the examination scheduled for March 23, 2011 or provide an explanation, within the allotted time, for his failure to attend or otherwise cooperate.

LEGAL PRECEDENT

Section 8123(a) of FECA⁷ authorizes OWCP 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 OWCP. The only limitation on this authority is that of reasonableness.⁸ Section 8123(d) of FECA provides that, “[i]f an employee refuses to submit to or obstructs an examination, his right to compensation is suspended until refusal or obstruction stops.”⁹ If an employee fails to appear for an examination, OWCP must ask the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination.¹⁰

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. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.¹¹

ANALYSIS

The Board has reviewed the evidence of record and notes that the record contains sufficient evidence to establish that appellant failed to submit to a medical examination within the meaning of section 8123 of FECA.

In January 2011, OWCP directed appellant to report for a second opinion examination to be conducted at a specific time and place on March 23, 2011 by Dr. Hare, a Board-certified psychiatrist.¹² Appellant did not attend the examination scheduled for March 23, 2011 with Dr. Hare. In a March 28, 2011 letter, OWCP provided appellant 14 days from the date of the letter to provide an explanation for his failure to attend the scheduled examination. Appellant did not provide a response within the allotted time.

On appeal, appellant argued that he did not receive OWCP’s January 2011 letters instructing him to appear for an examination with Dr. Hare or its March 28, 2011 letter advising him of the proposed suspension of his compensation because they were mailed to Couples Road in San Antonio and he had not lived at this address for several years. The Board notes, however, that

⁷ 5 U.S.C. § 8123(a).

⁸ See *Dorine Jenkins*, 32 ECAB 1502, 1505 (1981).

⁹ 5 U.S.C. § 8123(d). See 20 C.F.R. § 10.323.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010).

¹¹ *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

¹² The referral was proper as the record had not contained updated medical evidence since 2005.

at the time the letters were sent, appellant's address of record was the Couples Road address. Prior to the issuance of OWCP's April 12, 2011 decision, there was no indication in the record that appellant lived at any other address.

The Board finds that it is presumed that appellant received OWCP's letters advising him about the March 23, 2011 appointment and the need to explain his failure to appear for the appointment because these letters were properly addressed and duly mailed to his address of record. Appellant did not submit any contrary evidence to show that these letters were not mailed to him in the ordinary course of business.¹³

For these reasons, OWCP properly suspended appellant's right to compensation, effective May 8, 2011, for failure to submit to a medical examination.

CONCLUSION

The Board finds that OWCP properly suspended appellant's right to compensation, effective May 8, 2011, for failure to submit to a medical examination.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ See *supra* note 11.