

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

ARNICE ROGERS, Appellant

and

**DEPARTMENT OF THE ARMY, PINE BLUFF
ARSENAL, Pine Bluff, AR, Employer**

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**Docket No. 06-713
Issued: July 19, 2006**

Appearances:
Arnice Rogers, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 3, 2006 appellant filed a timely appeal from a decision of a hearing representative of the Office of Workers' Compensation Programs dated January 19, 2006, which found he was not entitled to retroactive wage-loss compensation for the period September 3, 1998 through July 10, 2002 following obstruction of a medical examination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant is entitled to retroactive compensation for the period September 13, 1998 through July 10, 2002, based on the suspension of his benefits, pursuant to 5 U.S.C. § 8123(d), due to his obstruction of a medical examination.

FACTUAL HISTORY

This is the fourth appeal before the Board. In the first appeal, the Board affirmed the Office's denial of appellant's hearing request as untimely and the suspension of his compensation benefits on the grounds that he failed to attend a scheduled medical examination

with Dr. Joe Schooler, a Board-certified orthopedic surgeon selected to serve as an impartial medical specialist.¹ The Board, however, found that the Office abused its discretion in denying appellant's request for reconsideration regarding his failure to attend the scheduled medical examination as he raised new contentions not previously considered. In the second appeal, the Board affirmed a March 2, 2001 decision which denied modification of the suspension of his compensation benefits effective September 13, 1998 on the grounds that he failed to attend a scheduled medical examination.² The Board, in the third appeal, set aside a June 19, 2003 Office decision, as it did not address appellant's request for retroactive compensation. The Board remanded the case for further action on appellant's request.³ The facts and the history of the case are set forth in the Board's decisions and are incorporated by reference.

By letter dated May 22, 2002, appellant advised the Office that he would submit to the examination scheduled with Dr. Schooler or an examination by a doctor of the Office's choosing. By letter dated June 20, 2002, the Office scheduled an examination with Dr. William Blankenship, a Board-certified orthopedic surgeon, for July 10, 2002 at 10:00 a.m. The record reveals that appellant appeared for the scheduled examination.

By decision dated November 18, 2004, the Office found that appellant forfeited his wage-loss compensation from August 3, 1998 through July 9, 2002 due to his obstruction of an impartial medical examination scheduled with Dr. Schooler. Thus, he was not entitled to retroactive compensation benefits.

Appellant requested an oral hearing which was held on October 25, 2005.

By decision dated January 19, 2006, the Office hearing representative affirmed the November 18, 2004 decision denying appellant's request for retroactive wage-loss compensation during the period of his suspension for failing to attend a medical examination as instructed.

LEGAL PRECEDENT

The Federal Employees' Compensation Act 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. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is

¹ In the June 23, 1998 letter referring appellant to Dr. Schooler for an impartial examination, the Office informed him of the consequences of his refusal to submit to the examination under 5 U.S.C. § 8123(d). He did not attend the initial appointment or the rescheduled appointment. The Office advised appellant by a July 9, 1998 letter of the consequences of his refusal to submit and provided him 15 days to provide reasons for his failure to attend the initial scheduled appointment. By decision dated September 13, 1998, the Office suspended compensation for refusing to submit to an examination with Dr. Schooler.

² Docket No. 01-1366 (issued May 2, 2002). Subsequent to the Board's decision the Office scheduled appellant for an examination on July 10, 2002, which he attended. In a letter dated August 28, 2002, appellant's representative requested benefits to resume including past compensation benefits.

³ Docket No. 04-1157 (issued August 23, 2004).

payable to the employee.⁴ The plain meaning of the statute is that compensation is forfeited for the period of the refusal or obstruction.⁵

Office procedures state 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 5 U.S.C. § 8123(d) until the date on which the claimant agrees to attend the examination. Such agreement may be expressed in writing or by telephone (documented on Form CA-110). When the claimant actually reports for examination, payment retroactive to the date on which the claimant agreed to attend the examination may be made.⁶

ANALYSIS

In a May 2, 2002 decision, the Board affirmed the Office's suspension of appellant's compensation on the grounds that he refused to attend a scheduled impartial medical examination with Dr. Schooler without good cause pursuant to section 8123(d). The Office suspended compensation effective September 13, 1998. In a May 22, 2002 letter, appellant agreed to attend a medical examination scheduled by the Office. On June 20, 2002 the Office informed him of his scheduled medical examination with Dr. Blankenship for July 10, 2002, which he attended.

In cases involving the obstruction of a medical examination, the Board has held that section 8123 of the Act does not provide a basis for the rejection of a claim for compensation. However, any compensation payable pursuant to a favorable decision on the merits of the claim after such obstruction ended is subject to appropriate deductions under section 8123(d), that is, deductions for the period of the employee's obstruction of the medical examination.⁷ The Board has held that compensation for the period in which the employee refuses to undergo a reasonably requested medical examination by the Office is forfeited.⁸ As appellant refused to attend a scheduled examination during the period September 13, 1998 through July 9, 2002, the Office properly found appellant forfeited compensation for the period of the obstruction. Based upon the forfeiture of his compensation benefits for that period, the Office properly denied his request for retroactive compensation during this period.

⁴ 5 U.S.C. § 8123(d) (physical examinations).

⁵ *Maura D. Fuller (Judson H. Fuller)*, 56 ECAB ____ (Docket No. 05-28, issued March 11, 2005); *William G. Saviolidis*, 37 ECAB 174 (1985). The employee will forfeit compensation otherwise paid or payable under the Act for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. § 8129. 20 C.F.R. § 10.323 (the penalties for failing to report for or obstructing a second opinion or referee examination).

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

⁷ See *Maura D. Fuller (Judson H. Fuller)*, *supra* note 5; *William G. Saviolidis*, *supra* note 5; *Gilbert Edgar Lee*, 34 ECAB 1445 (1983); *Joseph L. Ellis*, 33 ECAB 183 (1981).

⁸ *Maura D. Fuller (Judson H. Fuller)*, *supra* note 5; *William G. Saviolidis*, *supra* note 5.

CONCLUSION

The Board finds that appellant is not entitled to retroactive compensation benefits for the period September 3, 1998 through July 10, 2002 following the suspension of his benefits based on his obstruction of a medical examination.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2006 is affirmed.

Issued: July 19, 2006
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