

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNETTE CHEATHAM and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, La.

*Docket No. 96-1799; Submitted on the Record;
Issued June 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation for obstruction of a medical examination.

In the present case appellant filed a claim alleging that she sustained injuries on March 22, 1994 when a coworker sprayed a chemical substance near her face. The Office accepted the claim for conjunctivitis, rhinopharyngitis and rhinitis headaches. By decision dated December 26, 1995, the Office suspended appellant's compensation effective October 18, 1995 on the grounds that she had failed to submit to a second opinion examination.

The Board has reviewed the record and finds that the Office did not abuse its discretion in suspending appellant's compensation effective October 18, 1995.

Section 8123(d) of the Federal Employees' Compensation Act provides:

"If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter 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 payable to the employee."¹

In the present case the Office sent appellant letters dated October 4, 1995, advising appellant that a second opinion examination had been scheduled for October 18, 1995 with Dr. Alvin Cohen, a psychiatrist, and on October 19, 1995, with Dr. Edward Edrington, an otolaryngologist. The letters were sent to 3026 Fern Street, New Orleans, La., which apparently represented a former address.² There is no question, however, that appellant received the

¹ 5 U.S.C. § 8123(d).

² Appellant submitted a letter dated July 17, 1995 notifying the Office that her new address was 3314 Magnolia

notices, since she refers to the scheduled appointments in an October 16, 1995 letter to the Office. Appellant did not discuss her attendance at the scheduled appointments. The record indicates that appellant failed to appear for the scheduled appointments.

Before the Office can suspend benefits under section 8123(d), the Office must ask the claimant in writing to provide an explanation within 14 days for her failure to appear for the scheduled appointment.³ If good cause is not shown, entitlement to compensation may be suspended under section 8123(d) until the claimant reports for examination.⁴ In this case the Office advised appellant of the provisions of section 8123(d) and indicated that she had 15 days to provide, in writing, her reasons for not keeping the scheduled appointments. The letter was sent to both known addresses for appellant and to her representative. The Board notes that the letter was incorrectly dated as January 20, 1995. According to a November 8, 1995 response from appellant's representative, the January 20, 1995 letter was actually postmarked November 6, 1995 and received on November 8, 1995. The November 8, 1995 letter from appellant's representative stated, "it has been difficult for our office to maintain a level of lucidity with [appellant] regarding her appointments." Appellant's representative did not provide an acceptable explanation or reason for appellant's failure to appear.

The Board finds that the Office properly followed its procedures in suspending appellant's compensation under section 8123(d). Appellant did not appear for the scheduled appointments. The Office provided appellant an opportunity to explain her absence and appellant failed to provide good cause for her failure to appear. Her compensation was therefore properly suspended until the refusal or obstruction of a medical examination stops.

The Board further notes that the December 26, 1995 decision was incorrectly addressed and there is no indication that a copy was sent to appellant's representative. It appears, however, that on April 17, 1996, the decision was reissued and copies sent to appellant at both her known addresses and to her representative. Therefore the proper issue date of the decision is April 17, 1996.⁵

Street. The address provided with this appeal, however, was once again reported as 3026 Fern Street.

³ *George E. Reilly*, 44 ECAB 458 (1993).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (April 1993).

⁵ There is no indication that appellant submitted evidence or responded to the Office during the period from December 26, 1995 to April 17, 1996.

The decision of the Office of Workers' Compensation Programs dated December 26, 1995, issued on April 17, 1996, is affirmed.

Dated, Washington, D.C.
June 18, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member