

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. CRAMER and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, El Paso, TX

*Docket No. 02-722; Submitted on the Record;
Issued February 13, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation during the period December 8, 1998 through July 22, 1999 on the basis that he refused to undergo a medical examination.

On January 20, 1975 appellant, then a 35-year-old special agent, filed an occupational disease claim alleging that from January 12 through 18, 1975 he had a nervous breakdown with severe agitation and disruption. He stated that the course matter of hostage negotiations, which focused on psychologically aberrant behavior, affected him and caused his emotional condition. Appellant stopped work on January 20, 1975. He has not returned to work.¹

The Office accepted appellant's claim for acute schizophrenic reaction with depression and psychosis.

In order to determine the nature and extent of appellant's continuing employment-related disability, the Office referred appellant along with a list of specific questions, a statement of accepted facts and medical records to Dr. Curtis Spier, a Board-certified anesthesiologist with a secondary specialty in psychiatry, by letter dated November 5, 1998. The referral letter advised appellant that the examination was scheduled for November 18, 1998 and that, under section 8123(d) of the Federal Employees' Compensation Act, an employee's right to compensation is subject to suspension if the employee refuses to submit or obstructs a medical examination. By letter of the same date, the Office advised Dr. Spier of the referral.

In a November 8, 1998 letter, appellant advised the Office of his refusal to undergo the scheduled examination until the employing establishment released complete medical information as to the cause of his employment-related injury and disability.

¹ The record reveals that appellant retired from the employing establishment on disability on January 20, 1978.

By letter dated November 19, 1998, the Office issued a notice of proposed suspension of compensation based on appellant's failure to appear at the scheduled November 18, 1998 appointment or to reschedule the appointment. The Office noted that appellant had been advised, in its November 5, 1998 letter, that his right to compensation could be suspended if he refused to submit to a medical examination. The Office stated that he had 14 days to explain why he failed to keep the appointment with Dr. Spier and that, if his reasons for refusing to keep the appointment were found to be unacceptable, his entitlement to compensation would be suspended until he reported to the examination as directed.

In a November 28, 1998 letter, appellant advised the Office that his reasons for refusing to report to the scheduled examination were clearly made in his November 8, 1998 letter. He further stated that the record contained sufficient medical evidence establishing that he was totally disabled due to his federal employment. Appellant also stated that an examination by a "pain-management specialist" was not going to change his status. He concluded by requesting an oral hearing.

By decision dated December 8, 1998, the Office suspended appellant's right to compensation based on his failure to submit to the medical examination scheduled with Dr. Spier on November 18, 1998. The Office found that appellant failed to submit a satisfactory explanation justifying his refusal to attend the second opinion medical evaluation.²

In a January 1, 1999 letter, appellant requested an oral hearing before an Office representative.

In a July 22, 1999 letter, appellant's attorney advised the Office that appellant was willing to undergo the medical examination by Dr. Spier. In response, the Office advised appellant by letter dated December 20, 1999 that his examination with Dr. Spier had been rescheduled for January 3, 2000. By letter of the same date, the Office advised Dr. Spier about the examination.

Dr. Spier submitted a January 3, 2000 report diagnosing severe chronic delusional disorder.³ He opined that appellant's current disability was not caused by the course that appellant was required to attend. He also opined that appellant was capable of working at least on a part-time basis if his medical restrictions were accommodated. The Office found a conflict in the medical opinion evidence regarding appellant's work capacity and referred appellant to Dr. Abraham Katz, a Board-certified psychiatrist, for an impartial medical examination by letter dated April 27, 2000. The Office advised Dr. Katz of the referral by letter of the same date. In his May 10, 2000 report, Dr. Katz provided a diagnosis of a bipolar type schizoaffective disorder on Axis I, paranoid personality disorder on Axis II, moderate psychological stressors on Axis IV and a global assessment of functioning of 57 on Axis V. He noted no diagnosis on Axis III. Dr. Katz opined that appellant was not likely able to work due to his severe symptoms.

² In a January 13, 1999 decision, the Office denied appellant's November 28, 1998 request for an oral hearing on the grounds that it was made prior to the Office's final decision to suspend his compensation benefits.

³ Subsequent to appellant's January 3, 2000 examination, the Office reinstated his compensation benefits retroactive to July 22, 1999, the date he expressed his willingness to undergo an examination by Dr. Spier.

By decision dated December 20, 2000, the Office suspended appellant's compensation benefits, effective December 3, 2000, on the grounds that he failed to complete and return a Form CA-1032 regarding his employment and earnings.

On January 3, 2001 appellant requested an oral hearing. In subsequent letters, he requested that he be allowed to address both issues in the Office's December 8, 1998 and December 20, 2000 decisions at the hearing. The hearing was held on August 21, 2001.

At the hearing, appellant contended that the employing establishment caused his emotional condition by luring him to the class and performed a mind-altering experiment on him. His attorney argued that suspension of benefits violated the Federal Rehabilitation Act prohibiting discrimination against individuals solely on the basis of their disability.

By decision dated November 13, 2001, the hearing representative reversed the Office's December 20, 2000 decision suspending appellant's compensation benefits effective December 3, 2000. The hearing representative noted that the record contained a memorandum dated January 2, 2001 indicating that a conversation took place on that date between the Office and appellant's congressional representative's office acknowledging that the Form CA-1032 had been received and that benefits would not be suspended. In addition, appellant's wife, Elizabeth K. Cramer, submitted a copy of a certified mail receipt confirming that the Office received the Form CA-1032 on November 15, 2000. The hearing representative, however, affirmed the Office's December 8, 1998 decision suspending compensation benefits for the period December 8, 1998 through July 22, 1999 based on appellant's refusal to attend the November 18, 1998 second opinion examination with Dr. Spier. The hearing representative found that appellant failed to provide sufficient reasons for his failure to attend the examination.

The Board finds that the Office properly suspended appellant's compensation during the period December 8, 1998 through July 22, 1999 on the basis that he refused to undergo a medical examination.

Section 8123(a)⁴ of the Federal Employees' Compensation Act provides:

"An employee shall submit to [an] examination by a medical officer of the United States or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required...."

In this case, the Office reviewed the medical evidence of record and scheduled appellant for an examination by a second opinion physician to determine whether he had any continuing disability causally related to his accepted emotional conditions.

By letter dated November 5, 1998, the Office referred appellant to Dr. Spier, a Board-certified anesthesiologist with a secondary specialty in psychiatry, for an examination scheduled on November 18, 1998. The Office apprised appellant of the requirements for an examination under section 8123(d), which provides: "If an employee refuses to submit to or obstructs an

⁴ 5 U.S.C. § 8123(a).

examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops.”⁵

By letter dated November 8, 1998, appellant indicated to the Office his refusal to undergo the examination. He stated that he wanted the employing establishment to release complete medical information regarding the cause of his employment-related injury and disability. Appellant did not appear for the November 18, 1998 medical appointment with Dr. Spier.

The Board has held that a time must be set for a medical examination and the employee must fail to appear for the appointment, without an acceptable excuse or reason, before the Office can suspend or deny the employee’s entitlement to compensation on the grounds that the employee failed to submit to or obstructed a medical examination.⁶ In this case, the time for the second opinion examination by Dr. Spier was set, appellant was duly advised of the scheduled appointment and failed to appear for medical evaluation. The only remaining issue is whether appellant presented an acceptable excuse or reason for his failure to appear. In this regard, the Office’s Federal (FECA) Procedure Manual provides:

“Failure to Appear. 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 claimant reports for examination.”⁷

Following notice that appellant failed to appear for an examination by Dr. Spier, the Office, in a November 19, 1998 letter, allowed him 14 days to explain why he failed to keep the November 18, 1998 appointment and advised him that, if he did not respond or if his reasons were found unacceptable, his entitlement to compensation would be suspended until he agreed to submit to examination as directed. Appellant informed the Office, in a November 28, 1998 letter, that his reasons for failing to keep the appointment had been clearly made in his November 8, 1998 letter and that the record contained sufficient medical evidence establishing that he was totally disabled due to his accepted employment injury.

The Board finds that the Office properly allowed appellant to submit in writing and duly considered his stated reasons for the failure to keep the appointment on November 18, 1998. He was notified of the reasons necessitating his referral for examination by Dr. Spier and he has failed to suggest any reasonable justification for failing to keep the appointment that was scheduled. Although appellant contended that the Office violated the Federal Rehabilitation Act, appellant has not specifically delineated how the Federal Rehabilitation Act was applicable to the instant claim.⁸ Thus, appellant did not provide a sufficient excuse for his failure to appear for the

⁵ 5 U.S.C. § 8123(d).

⁶ *Margaret M. Gilmore*, 47 ECAB 718 (1996); *Herbert L. Dazey*, 41 ECAB 271 (1989); *Delores W. Loges*, 38 ECAB 834 (1987).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Suspension of Benefits*, Chapter 2.810.14(c) (January 1992).

⁸ If appellant contends a violation of the Federal Rehabilitation Act, he should look to that Act for recourse.

November 18, 1998 examination. The Office had properly scheduled a medical examination with Dr. Spier to determine the nature and extent of appellant's continuing employment-related disability. Appellant, however, did not attend the November 18, 1998 medical examination despite repeated notices concerning the penalty for not attending. Accordingly, the Board finds that his failure to keep the November 18, 1998 appointment with Dr. Spier constituted a refusal to submit to a medical examination without good cause. The Office properly invoked the penalty provision of section 8123(d) of the Federal Employees' Compensation Act and suspended appellant's compensation until July 22, 1999, the date of the letter from appellant's attorney, which indicated his willingness to attend a second scheduled appointment with Dr. Spier.⁹

The November 13, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 13, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁹ 20 C.F.R. § 10.323 states:

"If an employee refuses to submit to or in any way obstructs an examination required by the Office, his or her right to compensation under the Act is suspended until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the [Federal Employees' Compensation Act] for the period of refusal or obstruction and any compensation already paid for that period will be declared an overpayment and will be subject of recovery pursuant to 5 U.S.C. § 8129.