

On February 22, 2003 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim alleging that she injured her back and left leg when she slipped on a frozen puddle. The Office accepted her claim for lumbosacral strain. Based on a report from Dr. Herbert Stein, a Board-certified orthopedic surgeon to whom the Office referred appellant for a September 22,

2004 examination, the Office accepted a herniated disc at L5-S1. On January 11, 2005 Dr. Alan Hilibrand, a Board-certified orthopedic surgeon, conducted a microdiscectomy with bilateral annulotomy of the L5-S1 disc. Following her surgery, appellant was placed in a light-duty assignment and limited to four hours of work per day.

In an October 17, 2005 letter to Dr. Hilibrand, the Office requested updated information about appellant's work restrictions and treatment recommendations. On December 16, 2005 he responded, indicating that appellant was at maximum medical improvement from her surgery and was permanently limited to six hours of work per day because of diminished strength in her back. Dr. Hilibrand noted that appellant could not tolerate prolonged sitting or standing, he limited her to two hours of sitting and six hours of walking per day.

On March 8, 2006 the Office notified appellant that she was being referred for a second opinion evaluation to clarify the cause and extent of her injury-related impairment.<sup>1</sup> The letter informed her that failure to keep, refusal to submit to or obstruction of the examination could result in the suspension of her right to compensation until the refusal or obstruction ended. An appointment with Dr. Stein was set for April 5, 2006.

Appellant did not attend the appointment and neither contacted the Office nor Dr. Stein to reschedule it.

On May 1, 2006 the Office notified appellant that it was proposing suspension of her compensation benefits because of her failure to attend the scheduled appointment with Dr. Stein. It informed her that if she did not provide a written statement within 14 days, explaining her valid reasons for failing to attend the scheduled examination, her compensation benefits would be suspended until she attended and fully cooperated with the examination. Appellant did not submit a written explanation of her failure to attend the examination within the allotted time.

By decision dated May 17, 2006, the Office suspended appellant's compensation pursuant to 5 U.S.C. § 8123(d). The Office found that appellant failed to attend the examination despite having been informed of its scheduled time and the consequences for not attending. It also found that she had not responded to the notice of proposed suspension of compensation with a valid reason for failing to attend the examination. Appellant's compensation benefits were suspended effective May 17, 2006.

### **LEGAL PRECEDENT**

Section 8123 of the Federal Employees' Compensation Act authorizes the Office to require an employee, who claims disability as a result of federal employment, to undergo a

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<sup>1</sup> The Board notes that, in a letter dated March 1, 2006, the Office informed appellant that a second opinion examination was necessitated to determine the extent and degree of any employment-related residuals. In a follow-up letter to appellant dated March 8, 2006, the Office advised appellant that an examination was required due to a conflict of medical opinion. In a letter of the same date to Dr. Stein, the Office advised that the referral of appellant to him was for the purpose of determining the extent and degree of any employment-related disability. The Board concludes that the reference to appellant in the March 8, 2006 letter concerning resolution of a conflict of medical opinion was inadvertent. Dr. Stein had previously served as a second opinion specialist.

physical examination as it deems necessary.<sup>2</sup> 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.<sup>3</sup> The Office's federal regulation at section 10.320 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.<sup>4</sup> Section 8123(d) of the Act and section 10.323 of the Office's regulation provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her compensation is suspended until the refusal or obstruction ceases.<sup>5</sup> However, before the Office may invoke these provisions, the employee is provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS**

Following appellant's failure to attend a scheduled medical examination on April 5, 2006, the Office suspended her compensation benefits, effective May 17, 2006, pursuant to section 8123(d) of the Act. The Board finds that the suspension of these benefits was proper.

The Board notes that the Office properly sought an assessment of appellant's continuing employment-related disability. Following receipt of Dr. Hilibrand's opinion that appellant was under a permanent work restriction of six hours per day, the Office determined that a second opinion was necessary. The Office deemed the examination reasonably necessary to determine the extent and degree of any employment-related residuals. Under the Act appellant was required to attend it.

On March 8, 2006 the Office notified appellant of the required medical examination and informed her of her obligations to attend and cooperate. The notice clearly explained that appellant's compensation benefits could be terminated for failure to report to or obstruction of the examination. The notice contained the date and time of the appointment along with Dr. Stein's name, address and telephone number. The notice was properly addressed to appellant's address of record. The Board finds that appellant received proper notice of the

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<sup>2</sup> 5 U.S.C. § 8123(a).

<sup>3</sup> *James C. Talbert*, 42 ECAB 974, 976 (1991).

<sup>4</sup> 20 C.F.R. § 10.320.

<sup>5</sup> 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323.

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

<sup>7</sup> *Id.*; see *Scott R. Walsh*, 56 ECAB \_\_\_\_ (Docket No. 04-1962, issued February 18, 2005); *Raymond C. Dickinson*, 48 ECAB 646 (1997).

scheduled examination with Dr. Stein on April 5, 2006 and proper notice of her responsibilities and the consequences of not fulfilling them.<sup>8</sup>

The Board finds that appellant did not establish good cause for her failure to report to the scheduled examination. The Office notified appellant on May 1, 2006 of the proposed suspension of her compensation rights. It provided her 14 days to submit a valid reason for her failure to attend the scheduled medical appointment. The record establishes that appellant did not respond to the notice of proposed suspension. Appellant has not established a good cause for her failure to attend the examination.

### **CONCLUSION**

The Board finds that the Office properly suspended appellant's compensation benefits, pursuant to 5 U.S.C. § 8123(d), effective May 17, 2006, because of her failure to attend a medical examination.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 17, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2007  
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

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<sup>8</sup> The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have arrived at the mailing address. *See James A. Gray*, 54 ECAB 277 (2002).