United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 08-662**
	)	**Issued: August 26, 2008**
DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, Sault Saint Marie, MI, Employer	)	

Appearances:
Appellant, 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 December 18, 2007 appellant filed a timely appeal of an August 24, 2007 decision of the Office of Workers' Compensation Programs, which suspended his compensation benefits effective September 2, 2007 based on his failure to attend a second opinion medical examination. He also appealed from an October 22, 2007 decision, which suspended his compensation benefits based on his failure to submit a Form CA-1032, as required. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether the Office properly suspended appellant's compensation benefits effective September 2, 2007, under 5 U.S.C. § 8123(d), on the grounds that he failed to submit to a scheduled medical examination; and (2) whether the Office properly suspended appellant's compensation benefits for failure to submit a CA-1032 form when requested.

FACTUAL HISTORY

On August 2, 1989 appellant, then a 22-year-old emergency firefighter, sustained injury when he was struck by a rock on the right knee causing him to fall on his right side. The Office accepted his claim for a right patella subluxation and patella chondromalacia with surgery in 1990. Appellant stopped work on August 2, 1989 and did not return. The Office paid appropriate wage-loss compensation and medical benefits. In a decision dated September 2, 1994, the Board affirmed an Office decision reducing his compensation benefits under section 8113(b) based on appellant's failure to cooperate with vocational rehabilitation.[1] The facts of the case, as set forth in the prior decision, are incorporated herein by reference.

By letter dated March 19, 2007, the Office advised appellant that a second opinion medical evaluation was necessary and that he would be made aware of the details by separate notice.[2] By letter dated June 25, 2007, it informed appellant that it contracted out the scheduling of medical evaluations and that he would be contacted by the contract company once it rescheduled his appointment.

By letter dated June 27, 2007, appellant was informed by QTC Medical Associates (QTC) that an appointment for a second opinion examination was scheduled for August 8, 2007 with Dr. A. Creig MacArthur, a Board-certified orthopedic surgeon. The notice indicated that there would be no charge to appellant to attend this examination.

On August 9, 2007 appellant contacted QTC to advise that he could not make his second opinion appointment because he had received a telephone call which required him to go to Idaho. He did not advise how long he would be gone or provide any contact information in Idaho.

On August 10, 2007 the Office issued a notice of proposed suspension of compensation based on his failure to attend the August 8, 2007 medical appointment. Appellant was provided 14 days in which to submit a valid reason for failing to submit the scheduled examination. If he did not show good cause, his entitlement to compensation would be suspended under 5 U.S.C. § 8123(d) until he attended and cooperated fully with the examination. Although appellant contacted QTC and advised that he was required to go to Idaho, the circumstances of his departure were not sufficiently explained.

On August 15, 2007 the Office sent appellant a Form CA-1032 to complete pertaining to his receipt of compensation. He was asked to report any employment, volunteer work, and status of dependents and receipt of any other federal benefits or payments. Appellant was advised to return the statement within 30 days, otherwise his benefits would be suspended in accordance with 20 C.F.R. § 10.528.

[1] 45 ECAB 902 (1994).

[2] Appellant was initially referred for evaluation with Dr. Alfred C. Lotman, a Board-certified orthopedic surgeon. However, as he was in the process of relocating to Utah, notice of the appointment was not received in a timely manner.

By decision dated August 24, 2007, the Office finalized the August 10, 2007 notice of proposed suspension of compensation under 5 U.S.C. § 8123(d) effective September 2, 2007. It was noted that appellant failed to attend an examination and did not provide information to support his nonattendance.[3]

By letter dated September 18, 2007, the Office informed appellant that he had not responded to the CA-1032 form request for earnings and dependency information. It advised appellant that if he did not complete and return the form within 30 days of the date of the letter, his compensation benefits would be suspended as provided at 20 C.F.R. § 10.528. Appellant did not respond.

By decision dated October 22, 2007, the Office suspended appellant's compensation benefits as of October 28, 2007 based on his failure to report earnings and employment information as required. It noted that, if appellant completed and returned an enclosed copy of the CA-1032 form, his compensation benefits would be restored retroactively to October 28, 2007 provided that he complied with the attendance of the second opinion examination.

LEGAL PRECEDENT -- ISSUE 1

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 physical examination as it deems necessary.[4] The determination of the need for an examination, the type of examination and choice of locale and the choice of medical examiners are matters within the province and discretion of the Office.[5] The Office's federal regulations, at section 10.320, provide that a claimant must submit to examination by a qualified physician as often and at such time and place as the Office considers reasonably necessary.[6] Section 8123(d) of the Act and section 10.323 of the Office's regulations 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.[7] 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.[8] 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.[9]

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[3] Following issuance of this decision, appellant submitted a September 11, 2007 letter addressing the suspension of his benefits under section 8123(d). The Board notes that, as the Office did not consider this evidence, it may not be reviewed by the Board for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[4] 5 U.S.C. § 8123(a).

[5] *S.B.*, 58 ECAB ___ (Docket No. 06-1838, issued January 11, 2007); *James C. Talbert*, 42 ECAB 974 (1991).

[6] 20 C.F.R. § 10.320; *see Dana D. Hudson*, 57 ECAB 298 (2006).

[7] 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323. *See Sharon Handy*, 57 ECAB 446 (2006).

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

[9] *Id.; see Scott R. Walsh*, 56 ECAB 353 (2005); *Raymond C. Dickison*, 48 ECAB 646 (1997).

ANALYSIS -- ISSUE 1

On June 27, 2007 appellant was advised that a second opinion medical examination was scheduled for August 8, 2007. The record reflects that he did not attend the appointment. However, on August 9, 2007, appellant contacted QTC to advise that he had received a telephone call that required him to go to Idaho. No other information for his failure to attend the medical examination was provided. On August 10, 2007 the Office properly advised appellant of his failure to attend the August 8, 2007 medical appointment and provided 14 days to submit a valid reason for his failure to attend. No timely response was forthcoming.[10] By decision dated August 24, 2007, the Office suspended his compensation benefits, effective September 2, 2007, pursuant to section 8123(d) of the Act.[11]

Appellant's refusal to submit to the scheduled medical examination warrants suspension of compensation unless he can establish good cause for his failure to attend.[12] On August 10, 2007 the Office allowed appellant 14 days to provide a valid reason for failing to submit to the examination. Appellant was properly informed that if he did not show good cause, his entitlement to compensation would be suspended until he fully cooperated with the examination. As noted, he did not file a timely response. Therefore, he did not establish good cause for not attending the scheduled medical examination and the Office properly suspended his benefits.

LEGAL PRECEDENT -- ISSUE 2

Under section 10.528 of the Office's implement federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.[13] If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until the Office receives the requested report. At that time, the Office will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.[14]

ANALYSIS -- ISSUE 2

On August 15, 2007 the Office requested that appellant complete and return an CA-1032 form concerning the status of his employment and any dependents. The record reflects that the Office's letter was properly addressed and sent to appellant's residence. Appellant did not return a completed CA-1032 form to the Office within the time period allowed. As he failed to complete and return the form to the Office, it properly suspended his wage-loss compensation pursuant to the implementing federal regulations.

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[10] *See supra* note 3.

[11] 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323.

[12] *See supra* note 6.

[13] 20 C.F.R. § 10.528.

[14] *Id.; see also* 20 C.F.R. § 10.525; *Robert A. Robbins*, Docket No. 05-728 (issued July 15, 2005).

On appeal, appellant contends that he was not provided a notice of appeal rights as an attachment to the September 2, 2007 decision or a response to his September 11, 2007 letter, which he contends served as an exercise of his appellate rights. The Board notes that the record contains a copy of the September 2, 2007 decision complete with an attached notice of appeal rights. The evidence therefore does not support his contention that he was not properly apprised of his appellate rights by the Office. As noted, his September 11, 2007 letter is new evidence which may not be reviewed by the Board for the first time on appeal.

CONCLUSION

The Board finds that the Office properly suspended appellant's compensation benefits effective September 2, 2007 based on his failure to submit to a scheduled medical examination. The Board also finds that the Office properly suspended appellant's compensation benefits based on his failure to timely submit a completed CA-1032 form when requested.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 22 and August 24, 2007 are affirmed.

Issued: August 26, 2008
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