

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

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 07-1918
Issued: May 1, 2008**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 11, 2007 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated May 14, 2007, which suspended his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of the suspension.

ISSUE

The issue is whether the Office properly suspended appellant's compensation under 5 U.S.C. § 8123(d) for refusing to submit to a medical examination.

FACTUAL HISTORY

On January 11, 1999 appellant, then a 48-year-old mail handler, filed an occupational disease claim alleging that he suffered from left Achilles tendinitis as a result of the daily standing and walking involved in his job. The Office accepted appellant's claim for bilateral Achilles tendinitis with surgery, subsequent rupture of the right quadriceps tendon and right knee surgery. Appropriate medical and compensation benefits were paid.

By letter dated April 12, 2007, the Office informed appellant that a medical appointment had been made for him with a specialist in orthopedics. In an enclosure to the letter, the Office informed appellant that, if he refused to submit to or obstructed the examination, his right to compensation would be suspended, pursuant to 5 U.S.C. § 8123(d), until the refusal or obstruction stopped. By letter dated April 16, 2007, the Office referred appellant to Dr. Matthew Mitchell, a Board-certified orthopedic surgeon, for a second opinion examination. The Office informed appellant that the appointment was scheduled for April 24, 2007 at 9:30 a.m. and listed the doctor's address. On April 25, 2007 Dr. Mitchell's office informed the Office that appellant failed to keep the appointment.

On April 27, 2007 the Office issued a notice of proposed suspension of compensation for appellant's failure to report to the April 24, 2007 examination. Appellant was provided 14 days to provide a valid reason for his failure to submit to the examination. The Office noted that, if appellant did not show good cause for his failure to attend the appointment, his compensation would be suspended under 5 U.S.C. § 8123(d) until after he did attend and fully cooperate with the examination. Appellant did not provide a timely explanation. Accordingly, by decision dated May 14, 2007 the Office suspended compensation.

LEGAL PRECEDENT

An employee shall submit to 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.¹ If an employee refuses to submit to or obstructs an examination, his or her 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 payable to the employee.²

To invoke this provision of the law, the Office must ensure that the claimant has been properly notified of his or her responsibilities with respect to the medical examination scheduled. Either the claims examiner or the medical management assistant may contact the physician directly and make an appointment for examination. The claimant and representative, if any, must be notified in writing of the name and address of the physician to whom he or she is being referred as well as the date and time of the appointment. The notification of the appointment must contain a warning that benefits may be suspended under 5 U.S.C. § 8123(d) for failure to report for examination. The claimant must have a chance to present any objections to the Office's choice of physician, or any reasons for failure to appear for the examination, before the Office acts to suspend compensation.³

¹ 5 U.S.C. § 8123(a); 20 C.F.R. § 10.320 (1999).

² 5 U.S.C. § 8123(d); 20 C.F.R. §.10.323 (1999).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14 (July 2000).

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.⁴

ANALYSIS

The Office properly notified appellant in its April 16, 2007 letter of the date of the second opinion examination. The Office properly notified appellant in writing of the name and address of the physician to whom she was being referred, as well as the date and time of the appointment. In its April 12, 2007 letter, the Office advised appellant that benefits could be suspended under 5 U.S.C. § 8123(d) for failure to report. When appellant did not report for examination, the Office gave him 14 days to explain in writing. Appellant's refusal to submit to the medical examination warrants suspension of compensation unless he can establish good cause for his failure to report at the scheduled time.⁵

The Board finds that appellant did not establish good cause for his failure to report to the scheduled examination with Dr. Mitchell. In fact, appellant provided no explanation for his failure to attend the appointment within the allotted time, *i.e.*, prior to the issuance of the Office's May 14, 2007 suspension decision. Therefore, the Office properly suspended benefits.

CONCLUSION

The Board finds that the Office properly suspended appellant's compensation under 5 U.S.C. § 8123(d) for refusing to submit to a medical examination.

⁴ *E.B.*, 59 ECAB ___ (Docket No. 07-1618, issued January 8, 2008).

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2007 is affirmed.⁶

Issued: May 1, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ Following the Board's July 11, 2007 docketing of the current appeal, the Office issued a July 27, 2007 decision reducing appellant's compensation based on his ability to perform the duties of the constructed position of an order clerk/customer service clerk. Appellant has up to one year from the date of issuance of the Office's decision to appeal to this Board. 20 C.F.R. § 501.3(d)(2).