

work factors. OWCP accepted her claim for left carpal tunnel syndrome. Appellant received compensation benefits.²

On January 7, 2014 appellant filed a schedule award claim for permanent impairment due to her carpal tunnel syndrome. In an accompanying December 3, 2013 report, Dr. Samy F. Bishai, an orthopedic surgeon, opined that appellant had 24 percent left arm impairment due to her left shoulder, 9 percent due to her carpal tunnel syndrome, and 6 percent due to her de Quervain's tenosynovitis, for total 39 percent left arm impairment.

In a January 14, 2014 report, an OWCP medical adviser reviewed Dr. Bishai's report and recommended that appellant be referred for a second opinion.

By letter dated February 24, 2014, OWCP referred appellant for a second opinion examination with Dr. Jonathan Black, a Board-certified orthopedic surgeon. The appointment was scheduled for March 19, 2014.³ In an accompanying letter, OWCP advised appellant that it would pay for the examination and reasonable and necessary expenses incurred in obtaining the examination.

In an April 18, 2014 telephone call memorandum, OWCP was informed by QTC Medical Services, the medical scheduler, that appellant had appeared for her second opinion examination, but had refused to sign required intake documentation and thus the examination was not conducted. It indicated that QTC should treat this as a no show and that it would not be rescheduled.

On April 28, 2014 OWCP proposed to suspend appellant's compensation benefits due to her failure to appear for the scheduled examination on March 19, 2014 with Dr. Black. It provided appellant 14 days to provide good cause for her failure to appear and informed her of the penalty provision of 5 U.S.C. § 8123(d). No response was received.

By decision dated May 12, 2014, OWCP finalized the proposed suspension, effective that date. Appellant was informed that no further action would be taken until she agreed to cooperate with the second opinion examination with Dr. Black.

LEGAL PRECEDENT

Section 8123 of FECA authorizes OWCP 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, the choice of locale, and the choice of medical examiners are matters within the province and discretion of OWCP.⁵

² The record indicates that appellant has several other claims for which she has received benefits, including that she had received a prior schedule award for a 22 percent impairment due to left shoulder rotator cuff tear.

³ An earlier appointment was rescheduled by OWCP.

⁴ 5 U.S.C. § 8123.

⁵ *J.T.*, 59 ECAB 293 (2008).

OWCP regulations at section 10.320 provide that a claimant must submit to examination by a qualified physician as often and at such times and places as it considers reasonably necessary.⁶

Section 8123(d) of FECA and section 10.323 of its regulations provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.⁷ OWCP procedures provide that, before OWCP may invoke these provisions, the employee is to be 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 FECA.⁹

ANALYSIS

On February 24, 2014 OWCP notified appellant that she was scheduled to undergo a second opinion examination on March 19, 2014 with Dr. Black, with regard to her claim for a schedule award. Appellant appeared for the scheduled examination but refused to sign the intake documentation and as a result no the examination was conducted. OWCP treated this as a failure to attend the examination. In a letter dated April 28, 2014, it proposed to suspend appellant's compensation for failure to submit to the scheduled examination and provided 14 days to provide reasons for her failure to appear. Appellant did not respond.

The Board finds that appellant's refusal to follow standard intake procedures at Dr. Black's office constituted obstruction of an OWCP-directed medical examination. Appellant's disagreement with the physician's routine business practices, and her feeling that other procedures should have been followed, do not constitute good cause for her failure to cooperate.¹⁰ The purpose of the examination in this case was to assist OWCP in administering her claim for benefits. Appellant's obligation is to cooperate with, rather than obstruct this process. The Board will therefore affirm OWCP's May 12, 2014 decision suspending her compensation pursuant to 5 U.S.C. § 8123(d).

On appeal, appellant's representative asserted that appellant attended the appointment but she refused to sign paperwork indicating that she would be responsible for the charges. He also stated that she refused to sign paperwork acknowledging that Dr. Black did not carry malpractice insurance. However, OWCP previously informed appellant that it was paying for the examination but it is common practice for physicians to require patients to be responsible for any unpaid bills. It had advised appellant that she would be reimbursed for reasonable and necessary

⁶ 20 C.F.R. § 10.320.

⁷ 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323; *Dana D. Hudson*, 57 ECAB 298 (2006).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010); *J.T.*, *supra* note 5.

⁹ *Scott R. Walsh*, 56 ECAB 353 (2005).

¹⁰ *See R.T.*, Docket No. 14-95 (issued May 22, 2014) (appellant's refusal to follow standard intake procedures constituted obstruction of an OWCP-directed medical examination; for the purpose of invoking the penalty under 5 U.S.C. § 8123(d), it is sufficient that she refused to comply with standard intake procedures).

expenses incurred in obtaining the examination. Appellant has offered no evidence to support her allegation that Dr. Black had no malpractice insurance. For the purpose of invoking the penalty under 5 U.S.C. § 8123(d), it is sufficient that she refused to comply with standard intake procedures.¹¹ The Board notes that on April 28, 2014 appellant was provided 14 days in which to explain her reasons to appear for not undergoing the examination. However, appellant did not respond to the request or provide any reasons for her failure to undergo the examination before her benefits were suspended. Thus, the Board finds that OWCP properly suspended her right to compensation benefits pursuant to section 8123 of FECA.

CONCLUSION

The Board finds that OWCP properly suspended appellant's right to compensation benefits effective May 12, 2014 because she refused to attend a scheduled medical evaluation.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹¹ See *id.*