

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LECIL E. STEVENS and DEPARTMENT OF THE NAVY,  
NAVAL AIR SYSTEMS COMMAND, Jacksonville, Fla.

*Docket No. 96-998; Submitted on the Record;  
Issued September 16, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly suspended appellant's compensation effective June 21, 1995 for refusing to submit to an examination; and (2) whether the Office abused its discretion by denying appellant's request for reimbursement of travel expenses.

The Board has duly reviewed the case record and finds that the Office improperly suspended appellant's compensation effective June 21, 1995 for refusing to submit to an examination.

Section 8123(a) of the Federal Employees' Compensation Act<sup>1</sup> authorizes the Office to require an employee who claims compensation for an employment injury to undergo such physical examinations as it deems necessary. The determination of the need for an examination, the type of examination, the choice of local and the choice of medical examiners are matters within the province and discretion of the Office.<sup>2</sup> The only limitation on this authority is that of reasonableness.<sup>3</sup> Section 8123(d) of the Act provides that, "[i]f an employee refuses to submit to or obstructs an examination, his right to compensation is suspended until refusal or obstruction

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<sup>1</sup> 5 U.S.C. § 8123(a).

<sup>2</sup> See *Dorine Jenkins*, 32 ECAB 1502, 1505 (1981).

<sup>3</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts. *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

stops.”<sup>4</sup> If an employee fails to appear for an examination, the Office must ask the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination.<sup>5</sup>

In the present case, the Office accepted that appellant sustained sick sinus with tachy-brady syndrome by aggravation and paid compensation for periods of disability. By decision and order dated April 14, 1995, the Board had reversed a prior Office decision, which terminated appellant’s compensation effective December 15, 1991. The Board noted that there was a conflict in medical evidence regarding whether appellant continued to have an employment-related condition and directed the Office to refer appellant for an impartial medical examination. In May 1995 the Office referred appellant for an impartial medical examination to be performed on June 1, 1995 by Dr. Peter Kuhlman, a Board-certified internist. By decision dated June 21, 1995, the Office suspended appellant’s compensation effective June 21, 1995 for refusing to submit to an examination.<sup>6</sup>

The Board notes that the Office did not comply with its established procedure before it suspended appellant’s compensation under 5 U.S.C. § 8123(d). After the Office scheduled the impartial medical examination for February 1, 1995, appellant submitted a May 21, 1995 letter to the Office, in which he expressed concerns about the upcoming examination, including concerns regarding the accuracy of the statement of accepted facts and the completeness of the medical records in the case record.<sup>7</sup> Appellant did not appear for the examination scheduled for June 1, 1995 and, by decision dated June 21, 1995, the Office simultaneously advised appellant that his concerns regarding the examination were not valid and suspended his compensation effective June 21, 1995 for refusing to submit to an examination. After appellant failed to appear for the examination scheduled for June 1, 1995, the Office did not comply with its procedure by specifically asking appellant to provide in writing an explanation for his failure to appear at the scheduled examination. As noted above, the Office is required to make such a request within 14 days of the failure to appear for a scheduled examination. The fact that the Office, in its June 21, 1995 decision, addressed the concerns raised by appellant in his May 21, 1995 letter and deemed them to be invalid does not satisfy this procedural requirement.<sup>8</sup> For this reason, the Office improperly suspended appellant’s compensation effective June 21, 1995 for refusing to submit to an examination.

The Board further finds that the Office did not abuse its discretion by denying appellant’s request for reimbursement of travel expenses.

Section 8103(a) of the Act states in pertinent part: “The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies

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<sup>4</sup> 5 U.S.C. § 8123(d).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14a (April 1993).

<sup>6</sup> Appellant’s compensation had been reinstated after the Board’s April 14, 1995 decision.

<sup>7</sup> It should be noted that appellant did not express any intent in this letter to refuse to be examined.

<sup>8</sup> See generally *George E. Reilly*, 44 ECAB 458, 463-64 (1993); *James C. Talbert*, 42 ECAB 974, 975-76 (1991).

prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.... The employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.”<sup>9</sup> In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act.<sup>10</sup> The only limitation on the Office’s authority is that of reasonableness.<sup>11</sup>

In the present case, appellant claimed reimbursement for travel expenses incurred in 1991 for traveling round-trip from South Dakota for the purpose of being examined by an Office referral physician in Florida. By decision dated December 12, 1995, the Office denied appellant’s request for reimbursement of travel expenses. In denying appellant’s request for reimbursement, the Office noted that appellant’s official residence was in Florida and that the Office would only be required to reimburse appellant for travel between his home in Doctors Inlet, Florida and the examination site in Gainesville, Florida. The Office indicated that appellant’s travel between South Dakota and Florida was personal in nature and was not covered under the Act as related to his injury. The Board notes that the expenses appellant incurred for travel between South Dakota and Florida in 1991 must be considered personal to appellant and the Office’s denial of appellant’s request for reimbursement was reasonable.<sup>12</sup> The evidence of record does not indicate that the Office committed any act in connection with its denial of appellant’s request for reimbursement of travel expenses which could be found to be an abuse of discretion.

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<sup>9</sup> 5 U.S.C. § 8103.

<sup>10</sup> See *Wanda L. Campbell*, 44 ECAB 633, 640 (1993).

<sup>11</sup> See *supra* note 3.

<sup>12</sup> See generally *Campbell*, *supra* note 10 at 640.

The decision of the Office of Workers' Compensation Programs dated December 12, 1995 is affirmed and the decision of the Office dated June 21, 1995 is reversed.

Dated, Washington, D.C.  
September 16, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member