

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. WOODS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Chicago, Ill.

*Docket No. 97-2343; Submitted on the Record;
Issued June 11, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's compensation on the grounds that the medical evidence of record failed to support appellant's claim.

The Board has reviewed the record and finds that the case is not in posture for decision.

In this case, appellant filed a claim for a schedule award based on her accepted bilateral carpal tunnel syndrome injury. On February 5, 1997 the Office referred appellant to Dr. Martin J. Greenberg¹ for a second opinion regarding her claim.² On February 24, 1997 the Office notified appellant that her March 10, 1997 appointment had been rescheduled to March 17, 1997. In a report dated March 21, 1997, it was reported that appellant had not appeared at the March 17, 1997 appointment. The report was annotated with an ink note reading: "second time also missed March 10, 1997."³

In a decision dated June 2, 1997, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record failed to support appellant's claim. In its decision, the Office noted that appellant had failed to attend either a March 10 or 17, 1997 second opinion medical examination, and that therefore compensation was not payable "while a refusal or obstruction continues."

¹ Dr. Greenberg's office is located in Chicago, Ill.

² Appellant resigned effective December 17, 1996.

³ The Ricwel Corporation letterhead noted that it was located in Dublin, Ohio.

The Board finds that appellant's failure to keep the scheduled appointment did not constitute a refusal to submit, without good cause, to a medical examination that was reasonably required.⁴

Section 8123(a) of the Federal Employees' Compensation Act provides:

"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...."⁵

The Board has held that a time must be set for a medical examination and the claimant must fail to appear for the appointment, without an acceptable excuse or reason, before the Office can suspend or deny the claimant's entitlement to compensation on the grounds that the claimant failed to submit to or obstructed a medical examination.⁶ In the present case, the time for the second opinion evaluation with Dr. Greenberg was set, appellant was duly advised of the scheduled appointment, and failed to appear for medical evaluation. The only remaining issue is whether appellant presented an acceptable excuse or reason for her failure to appear. In this regard, the Office's Federal (FECA) Procedure Manual provides:

"Failure to Appear. 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 claimant reports for examination."⁷

In this case, a review of the record failed to disclose that appellant failed to appear at the March 10, 1997 appointment. Indeed, the Office notified appellant on February 24, 1997 that the March 10, 1997 appointment had been rescheduled to March 17, 1997. Further, the record failed to disclose whether the Office notified appellant that she had 15 days to explain to the Office why she missed the March 17, 1997 appointment. Because the Office did not provide appellant an opportunity to explain the reason or reasons for her failure to attend the March 17, 1997 appointment, its June 2, 1997 decision denying benefits was in error and must be set aside. Therefore the case will be remanded to the Office for preparation of a second opinion medical evaluation. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁴ *Larry B. Guillory*, 45 ECAB 522 (1994).

⁵ 5 U.S.C. § 8123(a).

⁶ *See Margaret M. Gilmore*, 47 ECAB 718 (1996).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (November 1998).

The decision of the Office of Workers' Compensation Programs dated June 2, 1997 is hereby set aside and the case remanded for further action as set forth in this decision.⁸

Dated, Washington, D.C.
June 11, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁸ The Board notes that appellant in her appeal asked that the Board review an additional claim that appellant had filed before the Office. However, the Board's jurisdiction is limited to final decisions of the Office; *see* 5 U.S.C. § 501.2(c).