

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA W. DAWKINS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Fayetteville, NC

*Docket No. 98-1059; Submitted on the Record;
Issued September 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation benefits.

On May 31, 1996 appellant, then a 55-year-old secretary (stenography), filed a claim for an occupational disease (Form CA-2) alleging that she first realized that her stress condition was employment related on May 9, 1996. Appellant stopped work on May 9, 1996 and she returned to work on August 26, 1996.

By letter dated July 2, 1997, the Office accepted appellant's claim for an episode of depression.

On July 10, 1997 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) for the period May 9 through August 23, 1996 to buy back leave she used during this time period. By letter dated July 25, 1997, the Office advised appellant that it was unable to pay her claim at this time inasmuch as there was insufficient medical evidence of record to support the claimed disability. The Office further advised appellant that she would be referred to an independent medical examiner to ascertain the cause of her disability and whether she suffered from continuing residuals.

In a September 13, 1997 letter, the Office referred appellant along with a statement of accepted facts and medical records to Dr. David B. Marcotte, a Board-certified psychiatrist and neurologist, for a second opinion examination. In this letter, the Office advised appellant of the penalty for refusing to submit to or obstructing the examination under section 8123 of the Federal Employees' Compensation Act. By letter of same date, the Office advised Dr. Marcotte of the referral.

In an October 22, 1997 response letter, appellant stated her intention not to attend the scheduled examination because she did not believe a second opinion examination by

Dr. Marcotte was in her best interest. Appellant said she was back at work; the supervisor who precipitated the alleged medical condition was no longer with the employing establishment and it would be too painful to revisit the employment-related events she had suffered. Appellant did not appear at the scheduled medical examination.

By letter dated November 25, 1997, the Office advised appellant that she had 15 days to submit a written explanation showing good cause as to why she refused to appear at the examination. Alternatively, the Office advised appellant that she could submit a written statement explaining why she was now willing to appear at the examination. The Office again advised appellant of the penalties for continued obstruction of a medical examination under section 8123 of the Act.

In a December 2, 1997 response letter, appellant requested that the Office waive her examination due to the abuse she suffered while working for a former Director of the employing establishment. Appellant also requested to buy back her leave and to receive reimbursement for her out-of-pocket medical expenses.¹

By decision dated January 26, 1998, the Office suspended appellant's compensation benefits. In so doing, the Office found that appellant's statement that an examination by Dr. Marcotte would not be in her best interest did not constitute a valid reason for obstructing this examination.

Section 8123(a) of the 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.² 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 the Office.³ The regulations governing the Office provide that an injured employee "shall be required to submit to examination by a U.S. Medical Officer or by a qualified private physician approved by the Office as frequently and at such times and places as in the opinion of the Office may be reasonably necessary."⁴ The only limitation on this authority is that of reasonableness.⁵ The Act provides that "[i]f an employee refuses to submit to or obstruct an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops."⁶ The Office procedures provide for a period of 14 days within which to present, in writing, his or her reasons for the refusal or obstruction.⁷

¹ In a January 20, 1998 telephone conversation with a representative from appellant's senator's office, the Office arranged to reimburse appellant for her medical expenses.

² 5 U.S.C. § 8123(a).

³ *Corlisa L. Sims (Smith)*, 46 ECAB 172, 180 (1994); *James C. Talbert*, 42 ECAB 974, 976 (1991).

⁴ 20 C.F.R. § 10.407(a).

⁵ See *William G. Saviolidis*, 35 ECAB 283, 286 (1983); *Joseph W. Bianco*, 19 ECAB 426, 428 (1968).

⁶ 5 U.S.C. § 8123(d).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter

In the present case, the Board finds appellant's reason that an examination by Dr. Marcotte would not be in her best interest is insufficient reason to forgo the medical examination scheduled by the Office. There is no medical evidence of record to establish appellant's employment-related emotional condition would be aggravated by Dr. Marcotte's examination. Further, the Office was in compliance with its established procedures when it invoked the provision of section 8123(d) in suspending appellant's entitlement to compensation due to her refusal to undergo the medical examination as directed by the Office. Therefore, the Office properly suspended appellant's compensation benefits.

The January 26, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
September 16, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member