

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OTTO G. WILLIAMS and DEPARTMENT OF THE ARMY,
WATERVLIET ARSENAL, Watervliet, NY

*Docket No. 98-2539; Submitted on the Record;
Issued May 10, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation for obstruction of a medical examination.

On August 19, 1982 appellant, then a 31-year-old machine tool operator, was guiding a gun tube that was being lowered by a crane when the gun barrel slipped and he grabbed it, developing back pain. He stated that he reinserted the gun barrel into the sling, placed in a vise and began to cut the muzzle when he stopped and reported the injury. Appellant stopped working at that time. He received continuation of pay for the period August 20 through October 3, 1982. The Office accepted appellant's claim, authorized continuation of pay and began payment of temporary total disability effective October 7, 1982, after he exhausted his leave.

In a July 29, 1997 memorandum, an employing establishment official indicated that an employing agency liaison team had tried to visit appellant at his last known residential address of 1390 Broadway, Rennselaer, New York. He noted that appellant's mailing address was P.O. Box 1811, Albany, New York. The official indicated that appellant's mother told the team that appellant lived near Saratoga, New York but she did not know the address. The official asked the Office to have appellant submit a valid residential address. In a July 30, 1997 letter, the Office asked appellant to submit his current residential address within 15 days. In a September 30, 1997 letter, the Office informed appellant that it had suspended his compensation for not providing his address. Appellant responded that his residential address was 102 Point Breeze Road, Saratoga Springs, New York. The Office reinstated appellant's compensation.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Barton Sachs, a Board-certified orthopedic surgeon, for an examination and a second opinion. In an October 28, 1997 report, he related that appellant gave a history of a large tube gun falling on him at work, knocking him unconscious and causing his hospitalization. Dr. Sachs reported that appellant complained of a constant back pain with radiation down the left

leg. He commented that appellant had subjective symptoms in the left leg. Dr. Sachs noted appellant had a normal bipedal gait pattern. Sensation was normal in the right leg but appellant had no sensation in the first dorsal leg space and decreased sensation in the plantar aspect of the foot and in the leg below the knee. He noted x-rays showed marked narrowing of the L5-S1 disc space, marked by a traction spur of the L5 vertebra. Dr. Sachs noted no instability and no translational motion and stated that the remainder of the lumbar spine was fine except for some sclerosis of the dorsal facet joint regions. He diagnosed lumbar spine dysfunction syndrome.

An Office claims examiner had a telephone conversation with Dr. Sachs in January 1998. In a memorandum of the telephone conversations, the Office requested appellant's work capacity but Dr. Sachs replied that before he could determine appellant's work capacity, appellant had to undergo a functional capacity study.

In a February 25, 1998 letter to appellant, an Office claims examiner stated that the Office had been trying to reach him to schedule an appointment for a functional capacity examination to determine his work capacity. She instructed appellant to call the Office to arrange the date of the appointment. The claims examiner warned him that failure to keep the examination appointment would be an obstruction of a medical examination and, under the Federal Employees' Compensation Act, could lead to suspension of his compensation. She gave appellant 14 days to respond to the letter. The letter was sent to "Pt. Breeze Rd., Saratoga Springs, N.Y." The envelope containing the letter was returned to the Office and indicated that delivery was attempted but the address was unknown.

In a March 24, 1998 decision, the Office suspended appellant's compensation on the grounds that he failed to respond to the Office's February 25, 1998 letter requesting him to respond within 14 days to schedule a medical appointment. The decision was sent to "P.O. Box 1811, Albany, N.Y."¹

The Board finds that the Office improperly suspended appellant's right to compensation.

Section 8123(d) of the Act² authorizes the Office to require an employee who claims disability as a result of federal employment to undergo a physical examination as deemed necessary. The Act provides as follows:

"If an employee refuses to submit to or obstructs an examination, his right to compensation under [the Act] is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues and the period of refusal or obstruction is deducted from the period for which compensation is payable to the employee."

¹ Appellant's compensation was reinstated April 16, 1998 after he indicated that he wished to undergo the examination. In a June 30, 1998 letter, the Office informed appellant's representative that he was not entitled for the period March 29 through April 15, 1998 because he did not cooperate with the medical management for his case.

² 5 U.S.C. § 8123(d).

The Office based its decision to suspend appellant's compensation on his failure to respond to its February 25, 1998 letter. The letter was sent to a residential address for appellant in Saratoga Springs, New York. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. The presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.³ In this case, the notice was mailed but was not properly addressed. The Office had been routinely mailing its correspondence to appellant to his post office box address in Albany, New York. However, in sending the February 25, 1998 letter, the Office sent it to a street address in Saratoga Springs, New York without a house number. The letter was returned to the Office as undeliverable. As the Office had deviated from the address that it had routinely sent correspondence to appellant, it cannot presume that he received the February 25, 1998 letter in the normal course of business. Therefore, appellant cannot be held to have obstruction a functional capacity examination because the Office cannot establish that he had been properly informed that he was required to undergo such an examination. The Office therefore improperly suspended appellant's compensation.

The decision of the Office of Workers' Compensation Programs, dated March 24, 1998, is hereby reversed.

Dated, Washington, D.C.
May 10, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ *Samuel Smith*, 41 ECAB 226 (1989).