

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLEN C. JONES, JR. and U.S. POSTAL SERVICE,
POST OFFICE, St. Paul, MN

*Docket No. 99-2313; Submitted on the Record;
Issued September 26, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's entitlement to compensation on the grounds that he failed to attend a physical examination pursuant to 5 U.S.C. § 8123(d).

Appellant filed an occupational disease claim on December 11, 1992 alleging that his knee problems were due to factors of his employment as a city carrier. The Office accepted the claim for permanent aggravation bilateral chondromalacia patela and right meniscus tear with surgical shaving and paid appropriate compensation.

On April 17, 1998 the employing establishment offered appellant the position of modified city carrier which appellant refused on April 21, 1997 and again on June 24, 1997.

On July 7, 1998 appellant filed a claim for a schedule award.

By letter dated July 24, 1998, the Office advised appellant that he had been referred to an impartial medical specialist to determine whether he had any permanent impairment due to his accepted employment injury which would entitle him to a schedule award.

By letter dated October 23, 1998, the Office advised appellant that he was being referred to Dr. Michael Smith, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve a conflict in the medical evidence as to whether appellant continued to have any work restrictions and if he had any permanent impairment. The Office informed appellant that the date of the medical appointment was December 17, 1998. By letter dated December 22, 1998, the Office advised that the appointment was rescheduled to February 1, 1999. The Office subsequently advised appellant that the appointment had been rescheduled to February 4, 1999 due to inclement weather on February 1, 1999. Appellant did not appear.

In a letter dated February 16, 1999, the Office provided appellant with the opportunity to present his reasons in writing for failing to keep the scheduled appointment. Appellant was allotted 30 days within which to respond but did not do so.

By decision dated March 29, 1998,¹ the Office suspended appellant's entitlement to compensation pursuant to 5 U.S.C. § 8123(d) because he failed to undergo a scheduled second-opinion evaluation.

The Board finds that the Office properly suspended appellant's entitlement to compensation pursuant to 5 U.S.C. § 8123(d).

Section 8123(a) of the Federal Employees' Compensation Act² provides that 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.³

Section 8123(d) provides that, if an employee refuses to submit to or obstructs an examination, his or her right to compensation is suspended until the refusal or obstruction stops.⁴ The Office shall inform an employee of the penalty for refusing or obstructing an examination required by the Office when giving notification of such an examination. 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. 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.⁵

In this case, upon receiving information from Dr. Smith's office that appellant failed to keep the February 1, 1999 appointment, the Office provided appellant the opportunity to present his reasons in writing for failing to keep the appointment. Appellant did not respond to the Office's request for providing reasons in writing why he failed to keep his scheduled appointment.

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

¹ The Board notes that the suspension was sent to the employing establishment's address as requested by appellant, but was marked "return to sender" on the envelope. By letter dated February 2, 1999, the Office advised the employing establishment that appellant requested all his correspondence be sent to his place of employment and requested assistance in ensuring that the enclosed letter be given to appellant. The Office also stressed that it was "very important that this information be received in a timely manner." The enclosed February 2, 1999 letter informed appellant that his impartial medical examination had been rescheduled from February 1 to 4, 1999 due to inclement weather.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8123(a).

⁴ 5 U.S.C. § 8123(d).

⁵ *Margaret M. Gilmore*, 47 ECAB 718 (1996).

Office. The only limitation on this authority is that of reasonableness.⁶ The Board, therefore, finds that the Office's action in requesting appellant to undergo evaluation to determine the degree of employment-related impairment was reasonable and did not constitute an abuse of discretion. Accordingly, as appellant refused to submit to a medical examination without good cause, the Office properly invoked the penalty provision of 5 U.S.C. § 8123(d) and his entitlement to compensation is suspended until this refusal stops.

The decision of the Office of Workers' Compensation Programs dated March 29, 1999 is hereby affirmed.

Dated, Washington, DC
September 26, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁶ *Daniel F. O'Donnell*, 46 ECAB 890 (1995).