

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARK LORD and U.S. POSTAL SERVICE,  
POST OFFICE, Syracuse, NY

*Docket No. 00-867; Submitted on the Record;  
Issued July 26, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation benefits for refusing to submit to a medical examination that he was directed to undergo.

On April 22, 1990 appellant, then a 40-year-old letter carrier, filed a claim alleging he developed a psychiatric condition as a result of stress from his federal employment. The Office accepted appellant's condition for a brief reactive psychosis. Appellant stopped work on February 23, 1989 and did not return.

Appellant submitted medical records from the Willard Psychiatric Center from February 22 to April 4, 1989 and various records from his treating physician, Dr. Frederick B. Remington, a Board-certified psychiatrist, dated March 27, 1989 to December 21, 1998. The medical records from the Willard Psychiatric Center indicated appellant was admitted for symptomology consistent with stress induced adjustment disorder. Appellant was diagnosed with a stress induced psychotic disorder and adjustment disorder with mixed disturbances of emotions and conduct. The various records from Dr. Remington dated March 27, 1989 to December 21, 1998, document appellant's continued treatment for his psychiatric condition. Dr. Remington's reports indicate a diagnosis of latent schizophrenia. He indicated in his annual reports that appellant was unable to return to work as a result of his emotional condition.

On July 27, 1998 the Office referred appellant for a second opinion evaluation to Dr. Suresh Undavia, a Board-certified psychiatrist. The Office provided Dr. Undavia with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated August 7, 1998, Dr. Undavia reviewed the medical records provided to him and performed a physical examination of appellant. Dr. Undavia noted appellant's history of brief reactive psychosis in 1989. He diagnosed appellant with psychotic

disorder, rule out delusional disorder, history of reactive psychosis, personality disorder, paranoia and history of hypertension and hypercholesterolemia. Dr. Undavia indicated he could not make a final recommendation regarding appellant's case without additional information from Dr. Remington psychological testing a review of appellant's chemical dependency history and of a treatment plan for appellant's paranoia.

In compliance with Dr. Undavia's recommendations, the Office referred appellant to Dr. Marvin Danburg, a psychologist, for psychological testing. The Office scheduled the appointment for October 16, 1998 at 4:15 p.m. and informed appellant of the penalty for refusing to submit to the examination. The letter was sent to appellant's address of record.

In a letter dated October 8, 1998, appellant indicated he would not attend the appointment scheduled with Dr. Danburg on October 16, 1998 because the distance was too great a hardship. Appellant indicated that in August 1998 he had attended a second opinion examination with Dr. Undavia and the distance involved, approximately 100 miles, was too far for him to travel. He indicated that he had two high mileage vehicles of questionable reliability for a three-hour round trip to the appointment and that the public transportation in his area was poor. Appellant requested that the examination be rescheduled for a closer location. He further noted that he had not been reimbursed for his travel expenses for the examination on August 7, 1998.<sup>1</sup>

By letter dated March 10, 1999, the Office provided appellant with the opportunity to present his reasons in writing for failing to keep the scheduled appointment. Appellant was informed that if no response and/or valid reason was received within 14 days from the date of this letter, his right to any future compensation would be suspended and his claim denied until the refusal and/or obstruction ceased.

In a letter dated March 24, 1999, appellant indicated that he did not refuse to attend the schedule examination on October 16, 1998 but requested that it be rescheduled because the distance was a hardship for him. He indicated that he notified Baseline Medical on October 8, 1998 and informed them he would not be attending the examination. Appellant indicated that the Office had sufficient time to contact him prior to the examination if his reasons for not attending the examination were not acceptable. He indicated that he received no response from the Office.

By decision dated April 7, 1999, the Office suspended appellant's entitlement to compensation under 5 U.S.C. § 8123(d) based on his failure to attend the scheduled appointment with Dr. Danburg.

By letter dated April 15, 1999, appellant requested a hearing before an Office hearing representative.

Appellant submitted letters dated April 15, June 23 and August 3, 1999. These letters noted that he requested the Office to reschedule the examination of October 16, 1998 to a location in closer commuting distance to his home. He indicated that the Office suspended his

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<sup>1</sup> On October 8, 1998 appellant left a voice message with the Office reiterating his position with regard to refusing to attend the second opinion examination with Dr. Danburg.

compensation benefits due to his refusal to attend the scheduled examination, however, he believed this decision to be in error.

On August 30, 1999 the Office referred appellant for a second opinion evaluation to Dr. Jenifer Rich, a Board-certified psychiatrist. The Office provided Dr. Rich with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated September 17, 1999, Dr. Rich indicated that she reviewed the medical records provided to her and performed a physical examination of appellant. She noted appellant's history of brief reactive psychosis in 1989. Dr. Rich diagnosed appellant with paranoia; schizotypal personality; history of hypertension and problems with social relationships. She concluded that appellant had been unresponsive to treatment and his condition was not likely to improve. Dr. Rich indicated appellant's prognosis was poor and that his return to employment would lead to a worsening of his paranoia state. The Office reinstated compensation after appellant kept this appointment.

On October 26, 1999 a hearing was held before an Office hearing representative. Appellant testified that he owned two vehicles; one with 190,000 miles and one with 140,000 miles, both of which would not be capable of commuting to the scheduled examination. He indicated that he had attended two previous examinations in August 1998 and in 1990 in Vestal, New York and Elmira, New York, respectively. Appellant testified that he requested the Office reschedule the examination to a closer locale.

In a decision dated December 9, 1999, the hearing representative affirmed the decision of the Office dated April 7, 1999.

The Board finds that appellant's failure to keep the scheduled appointment constituted a refusal to submit, without good cause, to a medical examination that was reasonably required.<sup>2</sup>

Section 8123(a) of the Federal Employees' Compensation Act authorizes the Office to require an employee who claims compensation for an employment injury to undergo such physical examinations as it deems necessary.<sup>3</sup> The determination of the need for an examination, the type of examination, the choice of the locale and the choice of medical examiners are matters within the discretion of the Office. The only limitation on this authority is that of reasonableness.<sup>4</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 the refusal or obstruction stops."<sup>5</sup> If an employee fails to appear for an examination, the Office must request

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<sup>2</sup> *Larry B. Guillory*, 45 ECAB 522 (1994).

<sup>3</sup> 5 U.S.C. § 8123(a).

<sup>4</sup> *See Eva M. Morgan*, 47 ECAB 400 (1996); *Dorine Jenkins*, 32 ECAB 1502 (1981).

<sup>5</sup> 5 U.S.C. § 8123(d).

the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination.<sup>6</sup>

The Board has held that a time must be set for a medical examination and the employee must fail to appear for the appointment, without an acceptable excuse or reason, before the Office can suspend or deny the employee's entitlement to compensation on the grounds that the employee failed to submit to or obstructed a medical examination.<sup>7</sup> In the present case, the Office properly scheduled appellant for diagnostic testing by Dr. Danburg to evaluate his psychological condition. The date and time for the second opinion evaluation with him was set. It was reasonable for the Office to refer appellant to Dr. Danburg as Dr. Undavia requested psychological testing. Appellant was duly advised of the scheduled appointment and failed to appear for medical evaluation. Consistent with its procedures,<sup>8</sup> the Office on March 10, 1999 requested that appellant explain within 14 days the reason why he failed to appear for the scheduled examination. The only remaining issue is whether appellant presented an acceptable excuse or reason for his failure to appear.

In letter's dated October 8, 1998, March 24, April 15 and June 23, 1999, appellant alleged that the commuting distance to Dr. Danburg's office for the examination scheduled for October 16, 1998, was too far for him to travel. He explained that he had two high mileage vehicles of questionable reliability, that the public transportation in his area was poor and noted that he had not been reimbursed for his travel expenses for the examination on August 7, 1998. However, the record indicates that on August 7, 1998 appellant attended an examination with Dr. Undavia, whose office is in the same complex as Dr. Danburg in Vestal, New York. The commuting distance is approximately 77.2 miles. The record also indicates that on September 13, 1999, appellant attended a second opinion examination with Dr. Rich in Syracuse, New York, which was a commuting distance of 81.6 miles, without hardship. The Board finds that the record does not support appellant's allegation that the distance to the examination was too far for him to travel as both prior to and following appellant's failure to attend the examination with Dr. Danburg, he made similar commutes for examination. Additionally, appellant claims that the public transportation in his area is poor; however, the record is void of any evidence to substantiate this allegation. For example, appellant did not address whether buses, trains or taxis could have been utilized as transportation to the examination site. Finally, appellant indicated that he had not been reimbursed for his travel expenses for the examination on August 7, 1998. However, again appellant has provided no evidence to substantiate this claim. Rather, the record indicates that appellant was provided with a travel voucher so that he

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<sup>6</sup> Donald E. Ewals, 51 ECAB \_\_ (Docket No. 98-2180, issued April 3, 2000); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing, Evaluating Medical Evidence*, Chapter 2.810.14(d) (November 1998).

<sup>7</sup> Margaret M. Gilmore, 47 ECAB 718 (1996).

<sup>8</sup> The Office's Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (November 1998) 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 agrees to attend the examination."

could claim reimbursement for any travel expenses incurred in attending the examination. There is no evidence of record that the Office has refused to reimburse appellant for expenses claimed on a properly submitted travel voucher. Consequently, appellant has not shown good cause for his failure to appear and the Office properly invoked the provisions of 5 U.S.C. § 8123, suspending his entitlement to compensation benefits until his obstruction ceased.<sup>9</sup>

The December 9, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 26, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> *Supra* note 5.