

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCISCO CRUZ and DEPARTMENT OF THE AIR FORCE,
AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 01-33; Submitted on the Record;
Issued July 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs acted properly in suspending appellant's right to compensation benefits under 5 U.S.C. § 8123 on the grounds that he refused to submit to a medical examination.

On November 4, 1999 appellant, then a 45-year-old aircraft engine mechanic, filed a notice of occupational disease claim for a hearing loss condition that he attributed to exposure to hazardous noise in this federal employment.

On February 9, 2000 the Office scheduled appellant for an audiological examination and audiometric evaluation with Dr. Jesse Moss, a Board-certified otolaryngologist, on February 29, 2000. Appellant was advised that his refusal to submit to or obstruction of the examination would result in suspension of his right to compensation under 5 U.S.C. § 8123 until such time as the refusal or obstruction stopped.

The record indicates that the Office was notified by Dr. Moss' office that appellant did not appear for the scheduled examination.

On April 17, 2000 the Office issued a notice of proposed suspension of compensation. The Office advised appellant that he had 14 days within which to provide an explanation in writing as to why he failed to attend the scheduled examination. The Office further explained that if good cause for the obstruction of the examination was not shown, then appellant's right to compensation would be suspended until such time as he reported for examination or demonstrated a good faith intent to report for any scheduled examination.

In a May 17, 2000 decision, the Office noted that there had been no response from appellant with respect to the notice of proposed suspension of compensation. The Office, therefore, found that appellant obstructed the examination of February 29, 2000 by refusing to attend and suspended his right to compensation until such time as the obstruction stopped.

The Board finds that the Office properly suspended appellant's right to compensation benefits under 5 U.S.C. § 8123 based on his refusal to submit to a medical examination.

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.”¹

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.² In the present case, the time for the audiological examination and audiometric evaluation with Dr. Moss was set for February 29, 2000 and appellant was duly advised of the scheduled appointment at the address he listed on his CA-2 claim form. Appellant, however, did not appear for the examination. The only remaining issue is whether appellant presented an acceptable excuse or reason for his 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.”³

Following notice that appellant failed to appear for the examination with Dr. Moss, the Office issued a notice of proposed suspension of compensation and gave appellant 14 days to respond with an explanation as to why he failed to keep the scheduled appointment. Appellant, however, did not respond within the time frame allocated. Because appellant did not provide an explanation for his refusal to undergo an examination scheduled by the Office, the Board finds that the Office properly suspended his right to compensation.

¹ 5 U.S.C. § 8123(a).

² *Margaret M. Gilmore*, 47 ECAB 718 (1996).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (April 1993).

The May 17, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 18, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member