

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH M. SOTO and U.S. POSTAL SERVICE,
JAMAICA QUEENS POST OFFICE, New York, NY

*Docket No. 00-1676; Submitted on the Record;
Issued August 16, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation because he did not undergo a physical examination scheduled by the Office.

On April 23, 1971 appellant, then a 29-year-old letter carrier, filed a notice of traumatic injury (Form CA-1), alleging that, while in the performance of his duties, he was bitten by a dog on the right leg. He later filed a separate notice of injury, indicating that due to several incidents occurring at his place of employment, he developed nervous tension and a headache. Appellant's claims were accepted for a deep dog bite of the right leg and anxiety reaction.

By letter dated August 10, 1998, the Office referred appellant to Dr. Carl Gossner, a Board-certified psychiatrist, for a second opinion. In this letter, appellant was advised that the examination would take place on August 17, 1998, that, if he was unable to attend the appointment, he should call the Office at least 24 hours before the day of the appointment, and advised appellant that, if he did not attend the appointment and could not establish good cause for failure to appear, the Office may find that he obstructed the examination and compensation could be suspended. Appellant failed to attend this scheduled examination.

By form letter dated January 29, 1999, the Office requested that appellant complete certain forms and submit a narrative medical report from his attending physician. The letter noted:

"If you are not currently under medical treatment, you may undergo an examination, at our expense, by a *BOARD-CERTIFIED SPECIALIST* (in the appropriate field) whose office is within twenty-five (25) miles of your residence.

"SUBMISSION OF THE REQUESTED FORMS & EVIDENCE IS YOUR RESPONSIBILITY.

“The information requested above *must* be submitted within thirty (30) days of the date of this letter. Failure to comply will result in the *SUSPENSION* and/or *INTERRUPTION* of your benefits, as provided under 5 U.S.C. § 8106(b)(c) and 8123(a)(b)(c).” (Emphasis in the original.)

By letter dated February 25, 1999, the Office notified appellant that he had 14 days from the date of the letter to provide an explanation as to why he failed to keep the appointment, and that, if the explanation failed to provide a good cause for failure to keep the appointment, appellant would be found to have obstructed the examination under the Act and benefits would be suspended. No timely response from appellant was received by the Office.

In a decision dated March 17, 1999, the Office suspended appellant’s compensation benefits effective March 27, 1999 for the reason that he obstructed a medical evaluation without reasonable cause.¹

By letter dated March 24, 1999, appellant, through his representative, stated that the letter notifying him of the proposed suspension of benefits was not received in time to be considered, that he had wrongfully been denied benefits, and that he requested an oral hearing.

Pursuant to appellant’s request, a hearing was held on September 23, 1999. At this hearing, appellant’s attorney indicated that appellant was under the impression that, if the physician to whom he was referred by the Office was more than 25 miles away from his residence, he was automatically given the option of either attending the scheduled examination or to be seen by his own physician.

By decision dated December 29, 1999, the hearing representative affirmed the Office’s decision. The hearing representative noted that appellant’s reasons for not attending the second opinion examination were not acceptable and that the sanctions as described in section 8123(d) were properly applied.

The Board finds that the Office properly suspended appellant’s compensation for obstruction of a medical examination.

Section 8123(a)² of the Federal Employees’ Compensation 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. Section 8123(d) states:

“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

¹ Benefits were reinstated effective August 9, 1999, after appellant kept an appointment for a second opinion evaluation by Dr. Leon Rosenberg, a Board-certified psychiatrist, on that date.

² 5 U.S.C. § 8123(a).

period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.”³

In the instant case, appellant, through his attorney, alleged that it was his understanding, from the letter sent to him by the Office, that as the second opinion physician was more than 25 miles from his residence, he was given the option of either attending the examination or being seen by his own physician. The language to which appellant apparently referred was in the January 29, 1999 form letter, wherein the Office stated:

“If you are not currently under medical treatment, you may undergo an examination, at our expense, by a *BOARD-CERTIFIED SPECIALIST* (in the appropriate field) whose office is within twenty-five (25) miles of your residence.” (Emphasis in the original.)

However, this letter could not have caused any confusion regarding the second opinion examination, as appellant was notified of the second opinion examination by letter dated August 10, 1998, which was over five months prior to the above letter which allegedly caused the confusion. In the letter of August 10, 1998, wherein appellant was referred to Dr. Gossner, the Office clearly indicated that appellant must attend the appointment or reschedule prior to the appointment. The Office clearly indicated that, if appellant did not attend and failed to establish good cause for not attending, his benefits could be suspended. This Board can see no rational way that appellant could have arrived at the conclusion that he had an option not to attend this appointment. Appellant’s objections do not present a credible explanation for his failure to keep the appointment. The Office acted properly within its discretion to suspend appellant’s compensation.⁴ As the only limitations on the Office’s authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁵ No such abuse is evidenced in this case.

³ 5 U.S.C. § 8123(d).

⁴ See *Gustavo H. Mazon*, 49 ECAB 156, 160-61 (1997).

⁵ *Id.*; *Daniel J. Perea*, 42 ECAB 214 (1990).

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

Dated, Washington, DC
August 16, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member