

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY J. SNYDER and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, OH

*Docket No. 00-490; Submitted on the Record;
Issued January 24, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant's compensation benefits were properly suspended for the period November 16, 1998 to March 15, 1999 on the grounds that she failed to submit a completed Form CA-1032 when requested; and (2) whether appellant's compensation benefits were properly suspended for the period November 16, 1998 to March 15, 1999 on the grounds that she refused to submit to a medical examination as requested.

The Office of Workers' Compensation Programs accepted that on January 27, 1989 appellant, then a 30-year-old distribution clerk, sustained aggravation of bilateral tendinitis, thoracic outlet syndrome, fibromyalgia of the neck and arms and depression, causally related to her federal employment. Appellant was given a limited-duty assignment but she stopped working on January 27, 1989. The Office paid appropriate benefits from that date.¹

On June 15, 1995 the Office sent appellant a Form CA-1032 for the preceding 15-month period. On August 16, 1995 the Office again requested that appellant complete a Form CA-1032.²

Also on August 16, 1995 the Office advised appellant that her benefits would be suspended if she did not complete, sign and submit the Form CA-1032.

On August 25, 1995 appellant responded, claiming that she did not receive the first request. She also indicated that her address had been changed to 338 Shanahan Rd., Lewis Center, Ohio 43035.

¹ Appellant returned to private sector employment from April 15 to September 30, 1991 and in October 1992 she returned to work at the employing establishment in a limited-duty capacity. She stopped work again on April 17, 1993 but continued working in the private sector.

² These forms were sent to appellant at 338 Shanahan Rd., Delaware, Ohio 43015.

On May 8, 1996 the Office requested that appellant complete a Form CA-1032 covering the preceding 15-month period. The form was sent to the Delaware, Ohio address. The record does not reveal that any response was received from appellant.

On May 12, 1996 the Office sent appellant a request for completion of a Form CA-1032 to the Lewis Center, Ohio address. The record does not reveal that any response was received from appellant.

On May 12, 1997 the Office again requested that appellant complete and return a Form CA-1032. This request was also sent to the Lewis Center, Ohio address. Again, the record does not reveal that any response was received from appellant.

On May 15, 1998 the Office again requested that appellant complete and return a Form CA-1032. This request was sent to the Lewis Center, Ohio address. The record does not reveal that any response was received from appellant.

On June 16, 1998 the Office advised appellant that it would soon refer her for a medical examination. The letter was sent to the Lewis Center, Ohio address. The Office subsequently made arrangements with Dr. Gerald S. Steiman, a Board-certified neurologist, for an examination on July 17, 1998. By letter dated June 25, 1998, the Office advised appellant of the appointment and provided directions to his office. It further advised appellant that if she did not submit to the examination her benefits would be suspended. By similar letter dated June 26, 1998, the Office advised appellant of another examination scheduled for July 22, 1998, with Dr. W. Scott Damian Nekrosius, a Board-certified psychiatrist.

Dr. Steiman's office advised the Office that appellant did not keep her July 17, 1998 appointment. As a consequence the Office advised appellant on July 21, 1998 as follows:

“If an employee refused to submit to or obstructs an examination, his/her right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.”

The Office advised appellant that she had 15 days, within which to explain why she failed to keep her scheduled appointment. This letter was mailed to the Lewis Center, Ohio address.

The Office rescheduled the appointment with Dr. Steiman for August 10, 1998. By letter dated July 22, 1998, the Office advised appellant of the new appointment.

However, Dr. Steiman's office advised the Office that appellant did not keep her appointment.

On August 21, 1998 the Office requested that appellant explain within 15 days why she did not keep her appointment. It included the above warning about failure to keep the appointment. All letters were sent to the Lewis Center, Ohio address.

Also on August 21, 1998 the Office sent appellant a second request for the Form CA-1032. It advised her that if she did not respond by September 7, 1998, her entitlement to continuing compensation would be suspended under the authority of section 10.125(a) of Part 20 of the Code of Federal Regulations. This letter was also sent to the Lewis Center, Ohio address. However, no response was forthcoming.

Therefore, on November 16, 1998 the Office suspended appellant's compensation benefits on the grounds that she had failed to submit a completed Form CA-1032 as requested. It also suspended compensation benefits on the grounds that appellant had failed to submit to a medical examination as directed by the Office.

By letter dated December 14, 1998, appellant requested an oral hearing.

Thereafter, on March 15, 1999 the Office received a completed Form CA-1032 from appellant dated September 4, 1998. In a letter to the Office that date appellant wrote that she had asked to reschedule the July 17 and 22, 1998, appointments because she had to travel on business. Appellant also stated that she did not receive the notice of the August 10, 1998 appointment. Appellant stated that if it could be rescheduled, she would attend a medical appointment.

The hearing was held on June 10, 1999 and at which appellant testified. Appellant testified that she completed and returned a Form CA-1032 on September 4, 1998 and explained that her delay in returning it was because she forgot about it. Appellant claimed that she had to be away on business the week of the 17th (presumably July). Appellant stated that she had contacted the physician's office, which told her the appointment would be rescheduled and she need not act further. Appellant claimed that she did not remember receiving the notice of the rescheduled appointment, but that she did receive the August 21, 1998 letter. She stated that then she contacted the Office, but did not receive a reply; then wrote a note stating her willingness to undergo an examination.

By decision dated August 26, 1999, the hearing representative found that the Office properly suspended appellant's compensation on the basis that she had not submitted her Form CA-1032 as requested. She found that the Office had sent appellant three CA-1032 forms to which she did not respond. The Office properly advised appellant of the penalty for not completing the forms, but she failed to submit a completed form and the Office properly suspended benefits. The hearing representative found that, when appellant finally complied by submitting the requested form, the imposed suspension should be lifted effective the date of suspension. The hearing representative further found that the Office properly suspended appellant's benefits on the basis that she failed to submit to a medical examination as directed. She found that appointment notices had been sent to the correct address and that appellant had not complied or responded prior to March 15, 1999. The hearing representative noted that the suspension was terminated effective March 15, 1999, as appellant finally responded to the Office stating that she would comply with the appointment.

The Board finds that appellant's compensation benefits were properly suspended for the period November 16, 1998 until March 15, 1999 on the grounds that she failed to submit a completed Form CA-1032 when requested.

Title 20 of the Code of Federal Regulations section 10.125(a) (1998) states:

“(a) While in receipt of compensation for partial or total disability and unless found by the Office to be unnecessary or inappropriate, an employee shall periodically be required to submit an affidavit or other report of earnings from employment or self-employment on either a part-time or full-time basis. I[f] an employee when required, fails within 30 days of the date of the request to submit such an affidavit or report, the employee’s right to compensation for wage loss under section 8105 or 8106 is suspended until such time as the requested affidavit or report is received by the Office, at which time compensation will be reinstated retroactive to the date of suspension....”

In this case, the Office was advised of appellant’s changed address on August 25, 1995. On May 12, 1996 the Office sent a correctly addressed request for completion of a Form CA-1032 covering the preceding 15 months. However, no response from appellant was forthcoming. On May 12, 1997 the Office again sent appellant a properly addressed request for completion of a Form CA-1032 covering the preceding 15 months. Again, no response from appellant was forthcoming. On May 15, 1998 the Office once more sent appellant a properly addressed Form CA-1032 and requested completion and return in a timely manner. However, no response was received by the Office. Thereafter, on August 21, 1998 the Office sent appellant a second request for a completed Form CA-1032 and advised that if she did not respond by September 7, 1998 her entitlement to continuing compensation would be suspended in accordance with 20 C.F.R. § 10.125. No response for appellant was forthcoming. Consequently, the Board finds that the Office was proper in concluding that appellant was refusing to complete CA-1032 forms as requested.

Therefore, the Board finds that on November 16, 1998 the Office properly suspended appellant’s entitlement to compensation for wage loss in accordance with 20 C.F.R. § 10.125.

On March 15, 1999 the Office finally received a completed Form CA-1032 and thereafter, on August 26, 1999 properly reinstated compensation retroactive to the date of suspension in accordance with the amended applicable regulations at 20 C.F.R. § 10.528 (1999).

The Board further finds that appellant’s compensation benefits were properly suspended for the period November 16, 1998 to March 15, 1999 on the grounds that she refused to submit to a medical examination as requested.

Title 5 of the United States Code section 8123(d) states:

“If an employee refuses to submit to or obstructs an examination, his/her right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.”

The Office advised, by properly addressed letter dated June 25, 1998, that appellant was scheduled for a medical examination with Dr. Steiman on July 17, 1998. It also advised

appellant, by letter dated June 26, 1998, that she had an appointment with Dr. Nekrosius on July 22, 1998. However, appellant failed to attend either one of these scheduled examinations.

On July 21, 1998 the Office advised appellant of the provisions of 5 U.S.C. § 8123(d) and requested that within 15 days she provide an explanation as to why she failed to attend the scheduled appointments. However, no response was received from appellant. The Office rescheduled an examination with Dr. Steiman for August 10, 1998 and by letter dated July 22, 1998 it advised appellant of the new appointment. However, appellant also failed to keep this new appointment. On August 21, 1998 the Office again requested appellant to provide within 15 days an explanation as to why she failed to keep the scheduled appointment; however, no response was forthcoming. Therefore, by decision dated November 16, 1998, the Office properly suspended appellant's compensation entitlement because she was refusing to submit to a directed medical examination. The Board finds that this suspension was proper under these ample circumstances of noncompliance.

Appellant, however, thereafter submitted a completed a Form CA-1032 on March 15, 1999 and provided an explanation why she did not attend the previous scheduled medical appointments. She also stated that if another appointment was scheduled, she would attend the examination.

By decision dated August 26, 1999, the Office reinstated appellant's compensation, effective March 15, 1999, as appellant had finally responded to the Office's requests and had agreed to attend a scheduled medical examination.

The Board finds that, therefore, the Office properly suspended and reinstated appellant's compensation benefits in accordance with 5 U.S.C. § 8123(d).

Accordingly, the August 26, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 24, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member