

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERRILL H. MORGAN and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, San Ysidro, CA

*Docket No. 01-1078; Submitted on the Record;
Issued January 11, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly suspended appellant's compensation for obstruction of a medical examination; and (2) whether the Office properly denied review of the written record.

On November 2, 1999 appellant, then a 62-year-old immigration inspector, filed an occupational disease claim alleging that he suffered from hypertensive cardiovascular disease as a result of his federal employment. He specifically alleged that when he was attempting to "break" an alien who had presented false documents, a blood vessel in his nose ruptured.

Appellant also noted that his working conditions were noisy, dusty and potentially very dangerous. He stated that he was on medication, but that his blood pressure continued to escalate, resulting in headaches and blurred vision. With his claim, appellant supplied the names and addresses of various doctors he had seen for hypertension.

In a medical report dated February 22, 2000, appellant's treating physician, Dr. James F. Lineback, a Board-certified internist with a subspecialty in pulmonary medicine, reviewed appellant's records and conducted a physical examination. He noted that appellant's high blood pressure was increasingly difficult to control since he began working for the employing establishment and that eventually he underwent an echocardiogram that showed evidence of left ventricular hypertrophy. Dr. Lineback opined that appellant's hypertension and his hypertensive heart disease were industrial. He recommended that appellant not return to his job and that he be retrained for a less stressful position to prevent any further aggravation of his hypertension and heart disease.

By letter dated July 26, 2000, the Office requested that appellant provide copies of medical documentation relating to an earlier occupational hypertension claim he filed with the City of Los Angeles.

By letter dated September 18, 2000, the Office told appellant that he would shortly receive notice of an appointment with an independent medical examiner and that as part of that examination he should bring all medical records related to his prior claim with Los Angeles and any other records of cardiac/hypertension treatment. The Office also told appellant to send a copy of these medical records. The consequences of noncompliance were explained.

By letter dated September 19, 2000, appellant was referred to Dr. Ajit Raisinghani, a Board-certified internist with a subspecialty in cardiovascular disease. In that letter, the Office requested that appellant bring “all available x-rays and copies of any medical reports completed within the last 30 days so that the examining physician may have the benefit of reviewing all available medical evidence.”

In a medical report dated October 5, 2000, Dr. Raisinghani reviewed Dr. Lineback’s reports and conducted a physical examination. He opined that appellant’s blood pressure would be difficult to control and that his hypertension could easily be aggravated under the conditions of his job with the employing establishment. He noted that the medical records pertaining to claimant’s hypertension claim with the City of Los Angeles were not available.

By decision dated November 16, 2000, the Office stated that it had not received a copy of appellant’s medical records regarding his claim against Los Angeles or any other records of cardiac/hypertension treatment. The Office noted that Dr. Raisinghani stated that appellant did not bring these records to the examination. Accordingly, the Office suspended appellant’s right to compensation.

By letter dated December 13, 2000 but postmarked December 20, 2000, appellant requested review of his case.

By decision dated February 12, 2001, the Office denied appellant’s request as untimely. The Office also reviewed his request under its discretionary powers and further denied it for the reason that the issue could equally well be addressed by requesting reconsideration.

The Board finds that the Office improperly suspended appellant’s compensation for obstruction.

Section 8123(a) 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.¹ 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 Office.² The Office’s regulation, 20 C.F.R. § 10.320, provides that an injured employee must submit to examination by a qualified private physician as often and at such times and places as the Office considers reasonably necessary.” The only limitation on this authority is that of reasonableness.³

¹ 5 U.S.C. § 8123(a).

² *James C. Talbert*, 42 ECAB 974 (1991).

³ *Id.*

Section 8123(d) of the Act provides that if an employee refuses to submit or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.⁴ However, before the Office may invoke this provision, the employee is provided a period of 14 days within which to present, in writing, his or her reasons for the refusal or obstruction.⁵

In this case, appellant attended the required examination. He also provided the second opinion physician copies of reports by his treating physician, Dr. Lineback, and a copy of his echocardiogram. Earlier, appellant had provided the Office with names of his physicians. The Office suspended his entitlement to benefits, however, because he failed to provide certain other medical records. However, it is unclear whether the Office's failure to receive these records was due to appellant's inaction or his physician's inaction. Appellant cannot be found to have obstructed a medical examination because of a physician's unexplained failure to furnish the documents to the Office. Furthermore, the Office did not give appellant the required 14-day warning that his compensation would be suspended for obstruction. In view of these facts, the Office's decision to suspend appellant's compensation is unreasonable. Therefore, the Board finds that his compensation must be reinstated retroactively.

In view of the Board's disposition on the first issue, the second issue, whether the Office properly denied review of the written record as untimely, is moot.

⁴ 5 U.S.C. § 8123(d).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (April 1993).

The November 16, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed. The decision dated February 12, 2001 is rendered moot.

Dated, Washington, DC
January 11, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member