

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSE J. OWENS and DEPARTMENT OF THE ARMY,
FORT SAM, Houston, TX

*Docket No. 02-230; Submitted on the Record;
Issued June 7, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly suspended appellant's compensation based on his refusal to submit to a directed examination; and (2) whether the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Office accepted that appellant sustained right shoulder and groin sprains in the performance of duty on September 8, 1999. Appellant worked intermittently, was off work from December 6, 1999 to January 18, 2000, when he returned to a light-duty position. By letter dated February 24, 2000, the Office notified appellant that a second opinion examination had been scheduled for March 20, 2000 with Dr. Fred Olin, a Board-certified orthopedic surgeon.

In a letter dated March 21, 2000, the Office notified appellant of a proposed termination of compensation. The Office found that appellant had failed to appear for the second opinion examination; appellant was provided an opportunity to present reasons for his failure to appear within 14 days. It was noted that, if good cause were not shown benefits would be suspended pursuant to 5 U.S.C. § 8123(d).

By decision dated April 11, 2000, the Office suspended entitlement to compensation. In a decision dated March 22, 2001, an Office hearing representative affirmed the prior decision. In a decision dated July 11, 2001, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Board finds that the Office properly suspended appellant's compensation.

5 U.S.C. § 8123(a) provides that "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." The regulations governing the administration of the Federal Employee's Compensation Act also

provide that “the employee must submit to an examination by a qualified physician as often and at such times and places as [the Office] considers reasonably necessary.”¹

In this case, the Office referred appellant to Dr. Olin for examination and a medical opinion on the relevant issues in the case: current objective findings, causal relationship between any findings and the employment incident; work restrictions; and specific treatment recommendations. There is no evidence that the referral was unreasonable in this case.

Section 8123(d) of the Act provides that “if an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops.” In accordance with established procedures, appellant was notified of the provisions of section 8123(d) and provided an opportunity to submit in writing his reasons for refusing to appear for the scheduled examination.² In a letter dated March 24, 2000, appellant stated that he was awaiting a response from his congressional representative regarding the legality of the second opinion referral. He also stated that he was seeking background information on Dr. Olin, such as whether he was keeping up with the latest developments in medicine. In a previous letter dated February 26, 2000, appellant stated that he did not know anything about Dr. Olin and that he had already been seen by four physicians.

The Board finds that appellant did not provide good cause for his failure to appear for the second opinion examination. The record indicates that Dr. Olin was a Board-certified orthopedic surgeon, and appellant offered no evidence to dispute that Dr. Olin was a qualified physician under the Act. Appellant states that other physicians saw him, but there is no evidence in the record that the Office had referred appellant for any prior examinations with respect to this claim. As noted above, the Office has discretion to require examinations as may be reasonably necessary and there is no evidence that the referral in this case was unreasonable. Appellant failed to appear for the scheduled examination, and did not provide appropriate reasons for his failure. Under the provisions of section 8123(d), appellant’s compensation is properly suspended until the refusal or obstruction stops.

The Board further finds that the Office properly denied appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office’s regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not meet at least one of the

¹ 20 C.F.R. § 10.320.

² See *Todd Harrison*, 49 ECAB 571, 580 (1998); *Corlisa L. Sims (Smith)*, 46 ECAB 172, 181 (1994).

³ 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

⁴ 20 C.F.R. § 10.606(b)(2).

requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁵

In this case, appellant requested reconsideration by undated letter received by the Office on July 2, 2001. Appellant again stated that he did not have enough information regarding Dr. Olin and the validity of the Office referral. He did not show that the Office erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument. Appellant also submitted a memorandum regarding potential ergonomic hazards in his work station, and medical evidence from his attending physician. None of the evidence is relevant to the issue of a failure to appear for the scheduled second opinion examination. Accordingly, the Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and the Office properly refused to reopen the claim for merit review.

The decisions of the Office of Workers' Compensation Programs dated July 11 and March 22, 2001 are affirmed.

Dated, Washington, DC
June 7, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).