

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH MUSKRAT and ENVIRONMENTAL PROTECTION AGENCY,
REGIONAL OFFICE, Denver, CO

*Docket No. 02-2070; Submitted on the Record;
Issued February 19, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation effective October 27, 1999 for failure to submit to a scheduled medical examination.

On October 21, 1979 appellant, then a 44-year-old regional supervisory attorney, filed a notice of occupational disease alleging that on or before June 1, 1979 he suffered an emotional condition as a result of his federal employment duties. He stated that his office was very busy, understaffed and that he was involved in several highly controversial legal matters. The Office accepted appellant's claim for aggravation of depression and anxiety. Appellant stopped work on November 19, 1979 as a result of his condition and has not returned.

On September 16, 1999 appellant was referred for an update second opinion evaluation to determine whether his work-related condition had ceased. His appointment was scheduled for October 7, 1999 with Dr. Michael Muldauer in Albuquerque, New Mexico. The Office also authorized a two-night stay at a local hotel to accommodate appellant's travel.

The record indicates that appellant contacted Dr. Muldauer's office prior to the appointment and informed them that he would not attend the examination because he had not received a copy of his psychiatric records.¹

On October 13, 1999 the Office issued a notice of proposed suspension of compensation since appellant did not attend the scheduled medical examination.

¹ By letter dated August 23, 1999, the Office notified appellant that, due to regulations, psychiatric medical evidence could not be released to any person other than a physician. The Office asked appellant to provide the name and address of a physician to whom he wanted the medical records to be sent. No information was provided.

By decision dated October 27, 1999, the Office finalized the proposed suspension of compensation since appellant failed to attend the medical examination and did not establish good cause for refusing to submit to the examination.

By letter dated November 18, 1999, appellant requested an oral hearing, which was held on February 27, 2002.² At the hearing, his representative claimed that she had called the physician's office prior to the scheduled appointment and was told that she must contact the Office in order to change the appointment. Appellant also claimed that the time and place of the medical examination in Albuquerque, New Mexico was unreasonable, since he and his family were in the process of moving to New Mexico from Nebraska. He also claimed that he wrote a letter to the Office explaining why he did not attend the examination after he received the notice of proposed suspension of compensation; however, there is no such letter of record.

By decision dated May 7, 2002, the Office hearing representative affirmed the October 27, 1999 decision, finding that appellant had reasonable time to attend the scheduled medical examination and did not establish good cause for not attending.

The Board finds that the Office properly suspended appellant's compensation effective October 27, 1999 for failure to attend a scheduled medical examination.

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.³ 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.⁴ The regulations governing the Office provide that an injured employee "must submit to examination by a qualified physician as often and at such times and places as [the Office] considers reasonably necessary."⁵ The only limitation on this authority is that of reasonableness.⁶ The Act provides:

"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. 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."⁷

² Appellant also submitted an August 5, 2001 report from Dr. Robert R. Franklin, indicating that he still suffered from post-traumatic stress disorder and major depressive disorder, which was causally related to the events occurring during his position at his former employing establishment.

³ 5 U.S.C. § 8123(a).

⁴ *Corlisa L. Sims (Smith)*, 46 ECAB 172, 180 (1994); *James C. Talbert*, 42 ECAB 974, 976 (1991).

⁵ 20 C.F.R. § 10.320.

⁶ *Raymond J. Hubenak*, 44 ECAB 395, 401 (1993); *William G. Saviolidis*, 35 ECAB 283, 286 (1983).

⁷ 5 U.S.C. § 8123(d).

In this case, the Office informed appellant of his October 7, 1999 appointment by letter dated September 16, 1999. Appellant's representative acknowledged at the oral hearing that appellant was aware of the scheduled appointment. She claimed that appellant only received the Office's letter on or around October 5 or 6, 1999 because the letter was sent to Cambridge, Nebraska.⁸ She also indicated that appellant called the physician's office and tried to postpone the examination and was told to contact the Office for permission to change the appointment. Appellant's representative acknowledged that she did not contact the Office because she did not "have any notice whatsoever" and "it was being sent to Nebraska" and she "was being delayed." Appellant's representative also claimed that she contacted the Office in writing, to explain why appellant did not attend the examination; however, there is no such letter of record.

The Board finds that, since appellant received the Office's September 16, 1999 letter on or around October 5 or 6, 1999 and the medical examination was scheduled for October 7, 1999, it was reasonable for appellant to attend the examination. The record indicates that the travel time from Taos, New Mexico to Albuquerque, New Mexico is about 3.5 hours. The Board also notes that the Office authorized a two-night stay in a local hotel to accommodate appellant's travel. The Board also notes that appellant was aware that he needed to contact the Office to postpone the scheduled medical examination. There is no evidence of record that appellant attempted to contact the Office to reschedule his appointment. Therefore, since appellant did not contact the Office and did not attend the scheduled medical examination, the Board finds that the Office properly suspended appellant's compensation benefits effective October 27, 1999.

The May 7, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ The Board notes that the letter was also sent to appellant in Taos, New Mexico.