

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM E. BRITT and U.S. POSTAL SERVICE,
CINCINNATI BULK MAIL CENTER, Cincinnati, OH

*Docket No. 02-1771; Submitted on the Record;
Issued March 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's right to compensation for refusal to undergo a medical examination.

The case has been on appeal previously.¹ In a March 14, 2001 decision, the Board noted that appellant had received a schedule award for a 20 percent permanent impairment of the left arm due to an April 17, 1981 employment injury. The Board noted that there was a discrepancy in the evaluation of appellant's left shoulder in that the original schedule award included a 2 percent permanent impairment of the shoulder due to a 20 degree elevation at the shoulder but the Office medical adviser, in a reevaluation, did not include that range of motion in confirming that appellant had a 20 percent permanent impairment of the arm. The Board pointed out that the Office medical adviser did not discuss a report of difficulty in eliciting tendon reflexes in the left arm and contrast that report with a report of a normal electromyogram. The Board also indicated that there were inconsistent reports of whether appellant had atrophy of the left shoulder. The Board remanded the case for further development of the medical record.

In a May 15, 2001 letter, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon, for an examination. In a May 31, 2002 report, appellant stated that he would not appear for the examination because Dr. Sheridan "was bought and paid for." In a June 6, 2002 note, Dr. Sheridan's office indicated that appellant did not appear for the examination.

In a June 8, 2001 letter, the Office gave appellant 14 days to explain his failure to submit to the examination. The Office warned appellant that if good cause was not established, his entitlement to compensation would be suspended until he reported for the examination.

¹ Docket No. 99-2357 (issued March 14, 2001).

In a June 14, 2001 letter, appellant contended that Dr. Sheridan was not an appropriate physician for a referral. He stated that Dr. Sheridan was not impartial but a “whore for dollars,” not a doctor. Appellant claimed that Dr. Sheridan would write whatever the Office wanted to hear. He asked why the Office could not pick a better physician.

In a July 5, 2001 decision, the Office suspended appellant’s compensation for refusal to undergo a medical examination.

In a March 13, 2002 letter, appellant requested reconsideration. He cited the injury of a coworker who refused to undergo an ordered examination by Dr. Sheridan because “he never finds anything wrong with anyone.” He stated that the Office, on that occasion, withdrew the order to see Dr. Sheridan and based the coworker’s schedule award on the report of his treating physician. He claimed that that incident established a precedent for a refusal to undergo examination by Dr. Sheridan.

In a March 22, 2002 decision, the Office denied appellant’s request for modification of the prior decision.

The Board finds that the Office properly suspended appellant’s compensation for refusal to undergo a medical examination.

Section 8123(d) of the Federal Employees’ Compensation 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 and the period of refusal or obstruction is deducted from the period for which compensation is payable to the employee.”²

Appellant, in this case, refused to go to Dr. Sheridan for examination even after he was warned of the consequences. He contended that Dr. Sheridan was not an impartial physician but would prepare an opinion favorable to whoever paid him. Appellant, however, only presented allegations against Dr. Sheridan. He did not present any evidence or documents to substantiate his contention that Dr. Sheridan’s report would be biased against him and favorable to the Office. Appellant, therefore, has not established that he had an appropriate, acceptable reason for not appearing for his examination by Dr. Sheridan.

² 5 U.S.C. § 8123(d).

The decisions of the Office of Workers' Compensation Programs dated March 22, 2002 and July 5, 2001 are hereby affirmed.

Dated, Washington, DC
March 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member