

**United States Department of Labor
Employees' Compensation Appeals Board**

SHARON HANDY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 04-1682
Issued: January 7, 2005**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 21, 2004 appellant filed a timely appeal from the June 8, 2004 merit decision of the Office of Workers' Compensation Programs, which suspended her compensation for obstructing a medical examination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the suspension.

ISSUE

The issue is whether the Office properly suspended appellant's compensation under 5 U.S.C. § 8123(d) for obstructing a medical examination.

FACTUAL HISTORY

On October 19, 2000 appellant, a manual distribution clerk, sustained an injury in the performance of duty when she picked up a heavy tray of mail. The Office accepted her claim for paraspinal muscle strain and lumbar derangement. She received compensation for temporary total disability. Effective July 13, 2003, the Office placed appellant on the periodic compensation rolls. On January 8, 2003 Dr. Leonard R. Smith, a Board-certified orthopedic

surgeon and Office referral physician, reported that it would be helpful if appellant underwent diagnostic testing and suggested that she undergo neurological consultation. On February 27, 2003 the Office provided her with a copy of Dr. Smith's report and advised her that an examination needed to be performed by a neurologist before a decision could be made in her case on her ability to work.

On March 5, 2003 the Office formally notified appellant that a second opinion evaluation was necessary:

"The name and address of the physician selected to perform this examination as well as the appointment time are identified on the attachment. The physician has been selected and the appointment arranged by, The Ricwel Corporation. The Ricwel Corporation is under contract to the government to obtain second opinion medical services and is in control of the selection of appropriate physician specialists, as well as the actual scheduling of appointments." The Office notified appellant of her rights and responsibilities and further notified her of her obligation to cooperate in the examination:

"Your full cooperation in this examination is required. Section 8123(d) of the Federal Employees' Compensation Act provides that:

If any 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."

"This provision also applies to any representative you may have."

"If you fail to provide an acceptable reason for not appearing for examination, your benefits will be suspended in accordance with [s]ection 8123(d) of the [Act]."

On March 14, 2003 a claims specialist from Ricwel notified appellant that she had an appointment with Dr. Hilliard E. Slavick on April 1, 2003. The specialist advised her: "Please see the attached letter from the U.S. Department of Labor outlining your rights and responsibilities."

When appellant did not keep the April 1, 2003 appointment, the Office issued a notice of proposed suspension of compensation on April 10, 2003. After considering appellant's reasons, the Office advised her that it would reschedule the appointment. On June 13, 2003 the claims specialist at Ricwel notified appellant that she had an appointment with Dr. Safwan M. Barakat on July 14, 2003: "This appointment was previously scheduled for April 1, 2003 at 1:00 p.m., with Dr. Hilliard E. Slavick. Due to the previously missed appointment, that exam[ination] has been rescheduled to the above date, time, doctor and location."

When appellant did not keep the July 14, 2003 appointment, the Office issued a notice of proposed suspension of compensation on July 16, 2003. The Office informed her that, if she did not show good cause for failing to report for the examination within 14 days, her compensation would be suspended.

In a decision dated August 19, 2003, the Office finalized its proposed suspension. The Office found that appellant failed to attend or obstructed, an examination directed by the Office and that she provided no explanation. The Office suspended her compensation effective that date.

Appellant requested an oral hearing before an Office hearing representative. She argued that, after receiving the June 13, 2003 letter directing her to report for another second opinion examination, she wrote the Office to reschedule the appointment because the mortgage on her home was being foreclosed and she and her daughter were seeking shelter. Appellant stated that she was currently living with her sister in Jacksonville, Florida. At the hearing, which was held on March 3, 2003, appellant testified that she left to live with her sister in May 2003. Later, she explained, she moved into transitional housing. Appellant also testified that she was willing to go to any examination. She stated that she did not intentionally miss the appointment in question and would keep the appointment if it were rescheduled. But she indicated that she probably could not make her way back to Illinois for an appointment there unless the Office paid for her travel.

In a decision dated June 8, 2004, the Office hearing representative affirmed the suspension of appellant's compensation. The hearing representative found that her testimony, that she could not attend the July 14, 2003 examination because she left the area in May 2003, was not credible: the record contained reports from her treating physician showing that he examined her in Riverside, Illinois, on July 26, 2003, only 12 days after the appointment in question.

LEGAL PRECEDENT

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.¹ If an employee refuses to submit to or obstructs an examination, his right to compensation 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.²

To invoke this provision of the law, the Office must ensure that the claimant has been properly notified of his or her responsibilities with respect to the medical examination scheduled. Either the claims examiner or the medical management assistant may contact the physician directly and make an appointment for examination. The claimant and representative, if any,

¹ 5 U.S.C. § 8123(a).

² *Id.* at § 8123(d); *see* 20 C.F.R. § 10.323 (1999).

must be notified in writing of the name and address of the physician to whom he or she is being referred as well as the date and time of the appointment. The notification of the appointment must contain a warning that benefits may be suspended under 5 U.S.C. § 8123(d) for failure to report for examination. If the claimant does not report for a scheduled appointment, he or she should be asked in writing to provide an explanation within 14 days. If good cause is not established, entitlement to compensation should be suspended in accordance with 5 U.S.C. § 8123(d) until the claimant reports for examination.³

ANALYSIS

In its first attempt to secure a neurological consultation, the Office formally notified appellant on March 5, 2003 of her rights and responsibilities with respect to the medical examination scheduled for April 1, 2003. The notice properly contained a warning that benefits may be suspended under 5 U.S.C. § 8123(d) for failure to report for examination. The Office also explained that the physician was selected and the appointment arranged by Ricwel, which was under contract to the government to obtain second opinion medical services and was in control of the selection of appropriate physician specialists and the actual scheduling of appointments. So there is no question in this case that Ricwel was acting as the Office's agent in the matter. When appellant did not keep her April 1, 2003 appointment, Ricwel notified her on June 13, 2003 that the appointment was rescheduled for July 14, 2003. Having already ensured that she was notified of her rights and responsibilities with respect to this medical examination and having already warned her that benefits may be suspended for failure to report, the Office was not required to resend its March 5, 2003 notice. The Board finds that appellant received proper notice of her rights and responsibilities and proper notice of the scheduled appointment.

The Board also finds that appellant has not established good cause for her failure to report for the scheduled appointment. She testified that she could not attend the July 14, 2003 appointment because she was no longer in the area; she had left Chicago, Illinois in May and was living with her sister in Jacksonville, Florida. But the record shows that she was examined by her own physician in a suburb of Chicago on July 26, 2003 only 12 days after the scheduled appointment. As this appears to contradict her testimony, the hearing representative properly affirmed the suspension of her compensation under 5 U.S.C. § 8123(d).

CONCLUSION

The Board finds that Office properly suspended appellant's compensation under 5 U.S.C. § 8123(d) for obstructing a medical examination.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14 (April 1993).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member