

merits of her claim under 5 U.S.C. § 8128(a). On appeal appellant contends that she was homeless at the time of the scheduled examinations.

FACTUAL HISTORY

On January 14, 2003 appellant, then a 25-year-old transportation security screener, filed a Form CA-1, traumatic injury claim, alleging that, on December 12, 2002, she injured her back lifting luggage. She stopped work on January 13, 2003. On May 19, 2003 the Office accepted that appellant sustained an employment-related lumbosacral strain and she received appropriate continuation of pay and compensation.

Appellant came under the care of Dr. Ronald Glousman, a Board-certified orthopedic surgeon. She accepted a job offer in June 2003 and returned to limited duty in July 2003. On August 18, 2003 she filed a recurrence claim, stating that she had stopped work on August 16, 2003 because of persistent pain.

The Office continued to develop the claim and, by letter dated August 14, 2003, informed appellant that a second opinion evaluation was to be scheduled. The Office informed appellant of her responsibility to attend the appointment and that, if she failed to do so without an acceptable reason, her compensation benefits could be suspended in accordance with section 8123(d) of the Federal Employees' Compensation Act.¹ In an August 18, 2003 letter, appellant was notified of an appointment with Dr. Bunsri T. Sophon,² Board-certified in orthopedic surgery, scheduled for 10:00 a.m. on September 10, 2003. Both letters were mailed to appellant's address of record, 5317 Keniston Avenue, Los Angeles, CA 90043. On September 11, 2003 Dr. Sophon informed the Office that appellant had not kept the scheduled appointment. A second appointment was scheduled with Dr. William Boeck, Jr., a Board-certified orthopedist, on October 20, 2003. The appointment notice was again sent to the Keniston Avenue address. Appellant did not keep this appointment.

By letter dated November 18, 2003, mailed to the Keniston Avenue address, the Office proposed to suspend appellant's compensation benefits on the grounds that she failed to appear for either examination scheduled for September 10 and October 20, 2003. The Office allowed appellant 14 days to provide in writing good cause for her failure to appear and informed her of the penalty provision of section 8123(d) of the Act. A telephone memorandum dated December 2, 2003 reports that appellant called the Office to state that she missed the first appointment because she got lost and was late but rescheduled. She stated that she missed the second appointment because she was homeless and it was hard to keep her appointments straight but confirmed that the Keniston Avenue address was her correct mailing address. At that time, the Office advised appellant to submit her reasons for failure to attend the scheduled examination in writing. By letter dated December 2, 2003, appellant repeated that she missed the first appointment because she got lost and was late, arriving at 10:25 a.m. She stated that the nurse rescheduled the appointment but that she was ill with asthma on the date of the second appointment. Appellant stated that she had rescheduled the missed appointment.

¹ 5 U.S.C. § 8123(d).

² Dr. Sophon is also known as Dr. Bunsri Thanasophon.

By decision dated December 22, 2003, mailed to appellant's Keniston Avenue address of record, the Office suspended her right to compensation benefits effective that day. The Office noted that appellant provided no evidence to support that illness precluded her from attending the October appointment and that there was no evidence indicating that she had attempted to reschedule the examination.³

On December 29, 2003 appellant requested a hearing, that was held on July 27, 2004. At the hearing appellant testified that the 5317 Keniston Avenue address was still her address of record but that she did not know about the second appointment because at the time she could not get her mail because she was homeless. She stated that she was hospitalized for stress in November 2003 and tried to reschedule the appointment three times. The hearing representative gave appellant 30 days to submit evidence that she had tried to reschedule the appointment. She testified that she was willing to participate in the examination.

By decision dated November 2, 2004, the Office hearing representative found appellant's reasons for not attending the scheduled examination unjustifiable and affirmed the December 22, 2003 suspension of compensation. She further found that, as appellant expressed willingness to attend, the Office should reschedule a second opinion evaluation. The Office thereafter referred appellant to Dr. Richard P. Pollis, a Board-certified orthopedist. Appellant attended the scheduled examination on December 22, 2004, and in a report that day, Dr. Pollis diagnosed chronic pain syndrome and provided permanent restrictions to appellant's physical activity. Appellant was returned to the periodic rolls, effective December 22, 2004, the date of Dr. Pollis' examination.⁴

On January 1, 2005 appellant requested reconsideration regarding her entitlement to compensation for the period December 22, 2003 to December 22, 2004. She stated that she had no income during that time and her daughter suffered.

LEGAL PRECEDENT -- ISSUE 1

Section 8123 of the 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.⁵ 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.⁶ The Office's federal regulation at section 10.320 provides that a

³ Dr. Glousman and his associate Dr. William H. Dillin, also Board-certified in orthopedics, continued to submit reports advising that appellant could work limited duty, however, the employing establishment indicated that limited duty was not available. On December 12, 2003 Dr. Glousman discharged appellant from his care with prophylactic restrictions.

⁴ Appellant was also referred for vocational rehabilitation and has begun training as a sound mixer.

⁵ 5 U.S.C. § 8123(a).

⁶ See *Lynn C. Huber*, 54 ECAB ____ (Docket No. 01-1704, issued December 31, 2002); *Donald E. Ewals*, 51 ECAB 428 (2000).

claimant must submit to examination by a qualified physician as often and at such time and places as the Office considers reasonably necessary.⁷ Section 8123(d) of the Act and section 10.323 of the Office's regulations provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.⁸ Office procedures provide that, before the Office may invoke these provisions, the employee is to be provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.⁹ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of the Act.¹⁰

ANALYSIS -- ISSUE 1

In this case, in a letter dated August 14, 2003, the Office informed appellant that a second opinion evaluation was to be scheduled and advised her that failure to attend the appointment without an acceptable reason could result in the suspension of her compensation benefits, in accordance with section 8123(d) of the Act, and on August 18, 2003 appellant was notified that an appointment was scheduled for 10:00 a.m. on September 10, 2003. Both letters were mailed to her address of record, 5317 Keniston Avenue, Los Angeles, CA 90043. Appellant did not keep the appointment scheduled for September 10, 2003 and a second appointment was scheduled for October 20, 2003. The appointment notice was again sent to the Keniston Avenue address. Appellant did not keep this appointment.

In response to the proposed termination dated November 18, 2003, by letter dated December 2, 2003, appellant stated that she missed the first appointment because she got lost and was late, arriving at 10:25 a.m. She stated that the nurse rescheduled the appointment but that she was ill with asthma on the date of the second October 20, 2003 appointment and could not attend. Appellant stated that she had rescheduled the missed appointment. At the hearing, however, appellant testified that she did not know about the October 20, 2003 appointment because at that time she could not get her mail because she was homeless.

The Board finds the reasons appellant has given for not attending the October 20, 2003 appointment inconsistent and not persuasive. She submitted no evidence to substantiate that she was ill on October 20, 2003 and stated that she herself scheduled this appointment when she arrived late for the first appointment scheduled on September 10, 2003. Appellant later contradicted this statement by testifying that she was homeless in October 2003 and had no knowledge of this appointment. As the Office appropriately directed her to report for a second opinion evaluation on October 20, 2003, when she failed to appear for the examination on the scheduled date and did not provide adequate reasons for not complying, the Office correctly

⁷ 20 C.F.R. § 10.320.

⁸ 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

¹⁰ *Id.*

determined that appellant refused to submit to a properly scheduled medical examination without good cause and suspended her right to compensation benefits effective December 22, 2003.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹² Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹³ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴ Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁵

ANALYSIS -- ISSUE 2

In her letter requesting reconsideration for a retroactive payment from December 12, 2003 to December 22, 2004, appellant merely stated that at that time she had no source of income and her daughter suffered. The Board finds that this statement is not sufficient to demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹⁶ With respect to the third above-noted requirement under section 10.606(b)(2), with her reconsideration request appellant submitted no additional evidence. The Office, therefore, properly denied her request for merit review.

CONCLUSION

The Board finds that the Office properly suspended appellant's right to compensation benefits for the period December 12, 2003 to December 22, 2004 as she refused to attend a scheduled medical examination and that the Office properly denied merit review.¹⁷

¹¹ 5 U.S.C. § 8123; see *Maura D. Fuller*, 54 ECAB ____ (Docket No. 02-625, issued January 28, 2003).

¹² 20 C.F.R. § 10.606(b)(2).

¹³ 20 C.F.R. § 10.608(b).

¹⁴ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

¹⁵ *Kevin M. Fatzner*, 51 ECAB 407 (2000).

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 14, 2005 and November 2, 2004 be affirmed.

Issued: October 6, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board