

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

NATALIE HOLMES, Appellant	)	
	)	
and	)	<b>Docket No. 05-1679</b>
	)	<b>Issued: May 3, 2006</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Houston, TX, Employer	)	
	)	

*Appearances:*  
Natalie Holmes, pro se  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 1, 2005 appellant filed a timely appeal of an August 24, 2004 decision of the Office of Workers' Compensation Programs that suspended her compensation for failure to attend a medical examination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether the Office properly suspended appellant's compensation for refusal to attend a medical examination.

**FACTUAL HISTORY**

On August 7, 1999 appellant, then a 28-year-old mail processor, filed a claim for compensation for an occupational disease of tendinitis of the right shoulder, which she attributed to sweeping mail. After initially denying the claim, the Office, pursuant to a hearing representative's July 13, 2000 decision, accepted that she sustained tendinitis of the right

shoulder in the performance of duty. The Office also accepted that appellant sustained a right shoulder strain in a July 19, 2000 traumatic injury involving pushing an all-purpose container.

Appellant, who had been performing limited duty at the employing establishment, interrupted by an accepted recurrence of disability from May 3 to 21, 2002, stopped work on September 19, 2003. She filed a claim for compensation beginning September 21, 2003. The Office accepted that she was disabled as a result of her accepted right shoulder condition and began payment of compensation for temporary total disability on September 21, 2003.

In a May 17, 2004 report, appellant's attending physician, Dr. Booker T. Wright, Jr., a Board-certified orthopedic surgeon, recommended surgery on appellant's right shoulder. In a July 6, 2004 report, Dr. Wright stated that she had chronic problems with both shoulders and had been unable to work for the past 8 to 10 months.

On July 7, 2004 the Office referred appellant, her medical records and a statement of accepted facts to Dr. Bernard Albina, a Board-certified orthopedic surgeon, for a second opinion evaluation of her right shoulder condition and her ability to work. She did not attend the appointment scheduled for July 28, 2004. In an August 10, 2004 notice, the Office proposed to suspend appellant's compensation for failure to report for the July 28, 2004 medical examination. It advised her that her compensation could be suspended for refusing to attend a medical examination and allotted her 14 days to provide, in writing, her reasons for failing to submit to this examination.

By decision dated August 24, 2004, the Office suspended appellant's compensation for refusing to submit to a medical examination.

### **LEGAL PRECEDENT**

Section 8123(d) of the Federal Employees' Compensation Act<sup>1</sup> states: "If an employee refuses to submit to or obstructs an examination, [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."<sup>2</sup> If an employee fails to appear for an examination, the Office must ask the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination and if good cause is not established entitlement to compensation is suspended until the employee agrees to attend the examination.<sup>3</sup> Under the "mailbox rule," it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8123(d).

<sup>2</sup> Similar language is contained in the Office's regulations, at 20 C.F.R. § 10.323.

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14d (July 2000).

<sup>4</sup> *A.C. Clyburn*, 47 ECAB 153 (1995).

**ANALYSIS**

The record indicates that the Office mailed its July 7, 2004 letter referring appellant to Dr. Albina to her correct address and there is no evidence that it was not received. It is presumed that she received this notice setting up an appointment for July 28, 2004. She did not appear for this scheduled appointment. The Office then notified appellant of the suspension provision of section 8123(d) of the Act and gave her 14 days to provide reasons for her failure to appear but she did not respond within the 14 days. The Office properly suspended appellant's compensation under section 8123(d) of the Act.

**CONCLUSION**

The Office properly suspended appellant's compensation for refusing to submit to a medical examination.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board