

a right groin strain and paid appropriate compensation. Appellant returned to modified work for two hours a day effective November 7, 2001 for one month, four hours a day for one month as of December 13, 2001 and eight hours a day effective January 29, 2002. He stopped work in June 2002.

On May 21, 2003 the Office notified appellant that he was being referred to a second opinion medical evaluation. The Office explained that the physician was selected and the appointment arranged by The Ricwel Corporation (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. It also advised appellant of his responsibility to attend the appointment and that, if he failed to do so without an acceptable reason, his compensation benefits could be suspended in accordance with section 5 U.S.C. § 8123(d).

On June 3, 2003 Ricwel informed appellant that he had an appointment on June 23, 2003 at 3:00 p.m. with Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon. Ricwel advised him that it should be contacted by telephone if this appointment needed to be rescheduled or if he was unable to attend as scheduled and that it would immediately contact the Office regarding his request.

On June 25, 2003 Ricwel advised the Office that appellant did not attend the scheduled medical examination with Dr. Sidell. By letter dated July 8, 2003, the Office proposed to suspend his compensation benefits on the grounds that he failed to attend the medical examination scheduled for June 23, 2003. The Office afforded appellant 14 days to submit his reasons in writing, with supporting evidence, for failing to attend the examination and that, if he did not show good cause, his compensation benefits would be suspended under section 8123(d) of the Federal Employees' Compensation Act until after he attended and fully cooperated with the examination. Appellant was instructed to contact the Office immediately if he intended to report to any rescheduled examination with Dr. Sidell. No response was received by appellant within the time allotted.

By decision dated August 8, 2003, the Office suspended appellant's compensation benefits effective that date. It found that he failed to attend the medical examination scheduled for June 23, 2003 or to provide written evidence justifying his failure to attend or cooperate with the examination.

By letter dated August 13, 2003, appellant requested an oral hearing before an Office hearing representative. He submitted a copy of a conversation log which indicated that, on July 17, 2003, he telephoned the Office and requested that his claims examiner call him back. An August 13, 2003 letter from Sara Bianco Riggio, appellant's sign language interpreter, stated that at 11:53 a.m. on July 17, 2003, she and appellant left a message for the claims examiner to return his call regarding the proposed suspension of his compensation benefits. Ms. Riggio contended that the call fell within the 14-day period to respond to the Office's proposed suspension and that its July 8, 2003 letter stated that this was an appropriate way to reply. She stated that the claims examiner failed to return appellant's call which led to the August 8, 2003 suspension of his compensation benefits.

By letter dated January 30, 2004, an Office hearing representative advised appellant that the record demonstrated that he called the Office on July 17, 2003 to discuss the missed appointment but that it did not appear that he made any effort to contact Dr. Sidell's office to reschedule the appointment as he was required to do. The hearing representative further advised that there was no evidence of record indicating that appellant provided a written explanation of his failure to attend the scheduled examination, other than an attempt to contact the claims examiner on July 17, 2003. The hearing representative stated that, although the claims examiner indicated that a telephone call would suffice, appellant was required to provide written documentation since he did not talk to her.

At the June 18, 2004 hearing, appellant testified, through a sign language interpreter, that he did not attend the scheduled medical examination with Dr. Sidell because he received too many pieces of mail from various doctors and he did not open the mail. He further testified that he showed the letters to his union representative who advised him not to open them. Appellant stated that, after receiving the Office's July 8, 2003 letter, he left several telephone messages for his claims examiner to call him back but she failed to do so. He could not remember whether he called Dr. Sidell's office about the examination. Appellant testified that, after the Office's issuance of its August 8, 2003 decision, he made several calls to Dr. Sidell's office beginning on February 24, 2004 to reschedule his appointment but the person who answered the telephone hung up on him.¹ He contended that he was not attempting to obstruct the Office's medical evaluation for him.

By decision dated September 13, 2004, the Office hearing representative affirmed the August 8, 2003 decision. The hearing representative found that, although the evidence of record established that appellant made several attempts to contact the Office after he was advised about the proposed action to suspend his compensation, it did not establish that he called the Office to reschedule his medical examination with Dr. Sidell. Further, appellant failed to provide adequate reasons for failing to submit to or cooperate with the scheduled examination in writing.²

By letter dated September 12, 2005, appellant, through his attorney, requested reconsideration. Counsel argued that the Office erred in suspending appellant's compensation benefits as he followed the Office's request within 14 days by promptly contacting it to reschedule his medical examination and it failed to call him back. In addition, appellant relied on poor advice from his union representative to not open the Office's June 3, 2003 letter. Counsel contended that the correspondence sent by the Office to appellant, regularly contained a

¹ At the hearing, appellant submitted correspondence requesting that the Department of Justice, Civil Rights Division, investigate his allegation of discrimination against Dr. Sidell's office for refusing to allow him to reschedule his examination. He also submitted documents indicating that his application for disability retirement had been approved by the Office of Personnel Management. Medical evidence revealed that he was totally disabled for work during the period June 18, 2002 through May 28, 2004.

² The Board notes that, on February 2, 2005, the Office referred appellant to Dr. Edward S. Forman, an orthopedic surgeon, for another second opinion medical examination. In a March 1, 2005 report, Dr. Forman opined that appellant was not totally disabled due to his accepted employment-related right groin strain based on the lack of any objective findings on examination and the medical evidence of record. Dr. Forman further opined that appellant was able to return to his preinjury status as a clerk. He stated that appellant's preexisting right inguinal hernia which required surgery was not a significant preexisting condition.

great deal of technical jargon and legalese that was difficult for him to understand. He noted that, even after appellant finally rescheduled his examination after four attempts, his calls to the Office were not returned. Conversation logs indicated that on February 24 and 26, 2004 appellant and Ms. Riggio left a message for the Office to call them back. On February 20, 24 and 26, 2004 they spoke to Dr. Sidell's office about rescheduling the medical examination. On February 26, 2004 Dr. Sidell's office advised appellant and Ms. Riggio to reschedule the examination through the Office. In a September 6, 2005 affidavit, appellant reiterated his prior reasons for failing to attend the June 23, 2003 examination with Dr. Sidell.

In a decision issued on May 3, 2006, the Office denied modification of the September 13, 2004 decision on the grounds that the evidence of record did not establish that the content of the Office's letters was confusing or that the claims examiner was responsible for his failure to respond to the Office's correspondence. Consequently, the Office found that appellant's compensation benefits were properly suspended for failing to attend the scheduled medical examination.

LEGAL PRECEDENT

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.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 Office's federal regulation at section 10.320 provides that a claimant must submit to examination by a qualified physician as often and at such time and places as the Office considers reasonably necessary.⁵ Section 8123(d) of the Act and section 10.323 of the Office's regulation provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her compensation is suspended until the refusal or obstruction ceases.⁶ However, before the Office may invoke these provisions, the employee is provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.⁷ 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.⁸

³ 5 U.S.C. § 8123(a).

⁴ *James C. Talbert*, 42 ECAB 974, 976 (1991).

⁵ 20 C.F.R. § 10.320.

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

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

⁸ *Id.*; see *Scott R. Walsh*, 56 ECAB ____ (Docket No. 04-1962, issued February 18, 2005); *Raymond C. Dickinson*, 48 ECAB 646 (1997).

ANALYSIS

In this case, the Office suspended appellant's compensation benefits effective August 8, 2003 under section 8123(d) of the Act on the grounds that he failed to attend a scheduled second opinion medical examination on June 23, 2003 with Dr. Sidell. The Board finds that the suspension of compensation benefits was proper.

The Office notified appellant on May 21, 2003 of his rights and responsibilities with respect to the medical examination scheduled by Ricwel. The notice properly contained a warning that benefits may be suspended under section 8123(d) of the Act for failure to report for examination. The Office 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. The Office properly determined that it required an assessment of appellant's continuing employment-related disability as he had not worked since June 2002. The Board finds that the record establishes that Ricwel was acting as the Office's agent in the matter. On June 3, 2003 Ricwel advised appellant by letter that he had an appointment with Dr. Sidell at 3:00 p.m. on June 23, 2003. On June 25, 2003 Ricwel notified the Office that appellant did not keep his June 23, 2003 appointment. The Office provided appellant with notification of his rights and responsibilities with respect to the scheduled medical examination and advised him that benefits may be suspended for failure to report to a scheduled medical examination. The Board finds that appellant received proper notice of his rights and responsibilities and proper notice of the scheduled examination with Dr. Sidell.

The Board finds that appellant did not establish good cause for his failure to report to the scheduled appointment. The record demonstrates that appellant contacted the Office on July 17, 2003 and left a message requesting that his claims examiner call him back regarding the proposed suspension of his compensation benefits. The Board has held that if a claimant raised the issue of having difficulty attending a scheduled examination prior to the date of the examination and the Office failed to address those concerns, then the claimant would have grounds after the suspension for challenging the propriety of the suspension of compensation.⁹ The Board has found, however, that the claimant must properly raise his or her concern prior to the scheduled examination.¹⁰ Appellant did not follow the instructions given to him by Ricwel to contact it prior to June 23, 2003 to reschedule the examination or state that he was unable to attend the examination as scheduled so that it could advise the Office. In fact, appellant testified that he did not know about the scheduled examination until after he received the Office's July 8, 2003 letter proposing to suspend his compensation benefits because he did not open the June 3, 2003 letter scheduling the medical appointment. Appellant stated that he routinely did not open his mail and that a union representative advised him not to open his mail. However, this does not establish good cause for failing to attend the second opinion evaluation by Dr. Sidell.

The Office, in its June 3, 2003 letter, appropriately directed appellant to report for a second opinion evaluation on June 23, 2003. He failed to appear for the examination on the

⁹ See *Gustavo H. Mazozn*, 49 ECAB 156 (1997).

¹⁰ *Id.*

scheduled date and did not provide adequate reasons for not complying. The Office properly determined that he refused to submit to a scheduled medical examination without good cause and suspended his right to compensation benefits effective August 8, 2003.¹¹

CONCLUSION

The Board finds that the Office properly suspended appellant's compensation benefits effective August 8, 2003 as he failed to attend a scheduled second opinion examination without showing good cause for his refusal.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹¹ 5 U.S.C. § 8123; *see Maura D. Fuller*, 54 ECAB 386 (2003).