



for post-traumatic stress disorder. On December 3, 2002 appellant stopped work and received compensation on the periodic rolls.

By letter dated November 23, 2005, the Office requested that appellant's treating physician provide an opinion with regard to whether appellant was able to participate in vocational rehabilitation services. On January 12, 2006 the Office received a reply from the physician, advising that she did not participate in workers' compensation and that the Office should seek an opinion from another physician.

On May 4, 2006 the Office advised appellant that she was being referred for a second opinion evaluation to obtain a current assessment of her condition, whether she continued to have residuals and information about her work capacity.<sup>2</sup> The Office informed her 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.<sup>3</sup>

By letter dated July 7, 2006, QTC, a company that schedules medical examinations on behalf of the Office, advised appellant that she had a July 25, 2006 appointment with Dr. Joel A. Fine, a Board-certified psychiatrist.<sup>4</sup> This letter advised appellant that her appointment had been rescheduled and that the employing establishment had been notified of the change. Dr. Fine's name, address and telephone number were included and the notice was properly addressed to appellant's address of record.

By letter dated July 25, 2006, Jeanette Martinez, a case coordinator for QTC, informed the Office that appellant did not attend the appointment with Dr. Fine on July 25, 2006.

In a memorandum of telephone call dated July 26, 2006, Ms. Martinez informed the Office that appellant did not appear for her medical appointment. She advised the Office that QTC left messages for appellant on July 11, 17, 20 and 21, 2006 and appellant did not respond. Ms. Martinez also noted that Dr. Fine called appellant on July 25, 2006, the date of her appointment and she failed to show for her appointment.

By letter dated July 26, 2006, mailed to appellant's address of record, the Office proposed to suspend her compensation benefits on the grounds that she failed to report for medical examination scheduled for July 25, 2006 as directed by the Office. Appellant was advised that she was notified by telephone by the Office on July 11, 2006 that she had an appointment on July 25, 2006 with Dr. Fine and she advised the Office that she had a conflict with that time, as she had another medical appointment. She was also notified that QTC would contact her and confirm the appointment. The Office noted that QTC left telephone messages on July 11, 17, 20 and 21, 2006, but that she did not respond to any of their calls or messages.

---

<sup>2</sup> The record reflects that appellant was also scheduled to attend second opinion examinations on May 24 and July 11, 2006 with Dr. Jillian Daly, a clinical psychologist. However, she did not appear.

<sup>3</sup> 5 U.S.C. § 8123(d).

<sup>4</sup> Appellant was previously scheduled for a second opinion examination with Dr. Arthur C. Lamb, a Board-certified psychiatrist on June 16, 2006. However, on June 26, 2006, the Office was advised that Dr. Lamb "declined the case."

Appellant was further advised that Dr. Fine's office called and left several messages for appellant on July 25, 2006; however, she did not respond. The Office allowed appellant 14 days to provide good cause for her failure to submit or cooperate with the second opinion examination and informed her of the penalty provision of section 8123(d) of the Act.

In a memorandum of telephone call dated August 3, 2006, appellant left a message advising the Office that she intended to reschedule the examination and was calling the Office per the July 26, 2006 letter.

On August 8, 2006 the Office called Ms. Martinez and confirmed that appellant had not rescheduled her appointment.

By decision dated August 10, 2006, the Office finalized the proposed suspension of compensation since appellant failed to attend the medical examination scheduled for July 25, 2006. It further advised appellant that by letter dated July 26, 2006 she was given 14 days to provide written evidence justifying her failure to attend or cooperate with this examination. The Office noted that on August 3, 2006, appellant left a telephone message but that she did not provide any written explanation of her failure to attend or cooperate with the prior rescheduled appointment. It found that appellant failed to attend, or obstructed an examination directed by the Office, and suspended her compensation effective August 10, 2006. Appellant was advised that her benefits would be reinstated only after verification that she attended and fully cooperated with the examination.

### **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.<sup>5</sup> If an employee refuses to submit to or obstructs an examination, his or her 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.<sup>6</sup>

To invoke this provision of the Act, 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, 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. The claimant must have a chance to present any objections to the

---

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *Id.* at § 8123(d).

Office's choice of physician, or for failure to appear for the examination, before the Office acts to suspend compensation.<sup>7</sup>

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 date on which the claimant agrees to attend the examination. Such agreement may be expressed in writing or by telephone (documented on Form CA-110). When the claimant actually reports for examination, payment retroactive to the date on which the claimant agreed to attend the examination may be made. The claimant's statement that he or she will not appear for an examination is not sufficient to invoke the penalty.<sup>8</sup>

### ANALYSIS

Following appellant's failure to attend a scheduled medical examination on July 25, 2006, the Office suspended her compensation benefits, effective August 10, 2006, pursuant to section 8123(d) of the Act. The Board finds that the suspension of her benefits was proper.

The Board notes that the Office properly sought an assessment of appellant's continuing employment-related disability and requested that appellant's treating physician provide an opinion with regard to whether appellant was able to participate in workers compensation services. However, appellant's treating physician advised the Office on January 12, 2006 that she did not participate in workers' compensation, and that the Office should obtain an opinion from another physician. The Office then determined that a second opinion was necessary for an assessment of her condition and an opinion regarding whether she continued to suffer residuals of the work injury and her work capacity. The Office deemed the examination reasonably necessary to determine the extent and degree of any employment-related residuals. Under section 8123 of the Act, appellant was required to attend it.

The Board finds that on May 4, 2006 the Office notified appellant that she was being referred for a second opinion evaluation to obtain an assessment of her condition and to ascertain her current work capacity. The Office informed her of her obligations to attend and cooperate. The notice clearly explained that appellant's compensation benefits could be terminated for failure to report to or obstruction of the examination.

On July 7, 2006 QTC, for the Office, advised appellant of the date and time of her scheduled July 25, 2006 appointment with Dr. Fine. She was also provided with Dr. Fine's name, address and telephone number. The letter was properly addressed to appellant's address of record. As noted, appellant did not appear for the appointment, nor did she respond to numerous messages left by QTC on July 11, 17, 20 and 21, and on July 25, 2006 by Dr. Fine's office.

---

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

<sup>8</sup> *Id.*

The Board finds that appellant did not establish good cause for her failure to report to the scheduled examination with Dr. Fine. The Office notified her on July 26, 2006 that it proposed suspension of her compensation benefits. It provided appellant 14 days to submit a valid reason for her failure to attend the scheduled medical appointment. The record reflects that she contacted the Office on August 3, 2006 and left a message that she intended to reschedule the appointment and was calling the Office per the July 26, 2006 letter. Appellant did not offer any justification for her failure to submit to the examination that would show good cause. On August 8, 2006 the Office confirmed that she had not presented for examination. The Board finds that appellant has not established a good cause for her failure to attend the examination with Dr. Fine.

The Office followed established procedures in suspending appellant's compensation under 5 U.S.C. § 8123(d). The Board will affirm the Office's August 10, 2006 decision suspending compensation effective that same date.

**CONCLUSION**

The Board finds that the Office properly suspended appellant's compensation benefits, pursuant to 5 U.S.C. § 8123(d), effective August 10, 2006, because of her failure to attend a medical examination.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 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