

claim for back and neck strain. Appellant was placed on the periodic rolls and received appropriate compensation benefits.

On July 12, 2006 the Office notified appellant that she was being referred for a second opinion medical evaluation to address her continued residuals and work capacity. It advised 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). By letter dated July 19, 2006, Medical Consultants Network (MCN), a company that schedules medical examinations on behalf of the Office, advised appellant that she had an appointment on August 3, 2006 at 1:15 p.m. with Dr. Wayne Kerness, a Board-certified orthopedic surgeon. Appellant was advised to contact MCN if she was unable to keep the appointment and to contact the Office if she had any questions. The notice was properly addressed to her address of record and included Dr. Kerness' address and telephone number.

By letter dated November 13, 2006, the Office proposed to suspend appellant's compensation benefits on the grounds that she failed to attend the medical examination scheduled for August 3, 2006. It afforded appellant 14 days to furnish reasons in writing, with supporting evidence, for her failure to attend the examination. The Office advised her that, if her reasons were deemed invalid, then she would be found to have obstructed a medical examination and her compensation benefits would be suspended under section 8123(d) of the Federal Employees' Compensation Act until the obstruction ceased.

On November 21, 2006 appellant informed the Office by telephone that the reason she did not attend the scheduled appointment was because she had been in the emergency room that weekend. She advised that she would submit medical evidence from her physician.

By decision dated March 20, 2007, the Office suspended appellant's compensation benefits, effective April 14, 2007. It found that she failed to attend the medical examination scheduled for August 3, 2006 or to provide written evidence justifying her failure to attend the examination.

In an April 12, 2007 letter, Elizabeth S. Lesser, a licensed clinical social worker and appellant's representative, requested reconsideration of the suspension of appellant's benefits. The Office was informed that appellant was currently hospitalized and had undergone several medical and psychiatric hospitalizations during the past year. Ms. Lesser noted that appellant was "disorganized and unable to fully care for herself."

On April 18, 2007 the Office received medical reports from the Zucker Hillside Hospital. In an April 13, 2007 report, Dr. James A. Amend, a treating physician, noted a history of schizophrenia and performed a magnetic resonance imaging (MRI) scan of the brain. The record contains Zucker Hillside Hospital inpatient progress notes dated March 21 and April 13, 2007 by Dr. Abdullah Hasan, a treating psychiatrist. He indicated that appellant was diagnosed with schizophrenia disorder and admitted to the hospital on March 21, 2007.

By decision dated May 1, 2007, the Office denied modification of the suspension of her benefits.¹

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.² 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.³ The Office's federal regulations, 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.⁴ 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 compensation is suspended until the refusal or obstruction ceases.⁵ 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.⁶ 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.⁷

ANALYSIS

Following appellant's failure to attend a scheduled medical examination on August 3, 2006 the Office suspended her compensation benefits, effective April 14, 2007, pursuant to section 8123(d) of the Act. The Board finds that the suspension of benefits was proper.

The Board notes that the Office determined that a second opinion examination was reasonably necessary to determine appellant's work capacity and the extent and degree of any

¹ The Board notes that, following the May 1, 2007 decision appellant submitted additional evidence. Its jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. *See* 20 C.F.R. §§ 501.2(c); *Donald R. Gervasi*, 57 ECAB ___ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). Therefore, this new evidence cannot be considered by the Board on appeal. Appellant may submit this evidence to the Office, together with a formal written request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

² 5 U.S.C. § 8123(a).

³ *S.B.*, 58 ECAB ___ (Docket No. 06-1838, issued January 11, 2007); *James C. Talbert*, 42 ECAB 974 (1991).

⁴ 20 C.F.R. § 10.320; *see Dana D. Hudson*, 57 ECAB ___ (Docket No. 05-300, issued January 9, 2006).

⁵ 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323. *See Sharon Handy*, 57 ECAB ___ (Docket No. 06-51, issued February 17, 2006).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

⁷ *Id.*; *see Scott R. Walsh*, 56 ECAB ___ (Docket No. 04-1962, issued February 18, 2005); *Raymond C. Dickinson*, 48 ECAB 646 (1997).

employment-related residuals. Under section 8123 of the Act and its implementing regulations appellant was required to attend the examination.⁸

On July 12, 2006 the Office notified appellant that she was being referred for a second opinion evaluation on the issues of continuing residuals and 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 for or obstruction of the examination. In a letter dated July 19, 2006, which was properly addressed to appellant at her address of record, MCN advised her of the date and time of her scheduled August 3, 2006 appointment with Dr. Kerness. Appellant was also provided with Dr. Kerness' address and telephone number. As noted, she did not appear for the appointment, nor did appellant attempt to reschedule the appointment prior to the designated time. Appellant's refusal to submit to the medical examination warrants suspension of compensation unless she can establish good cause for her failure to report at the scheduled time.⁹

The Board finds that appellant did not establish good cause for her failure to report to the scheduled examination with Dr. Kerness. The Office notified her on November 13, 2006 that it proposed suspension of his compensation benefits. Appellant was given over 14 days to submit a valid reason for her failure to attend the scheduled medical appointment. The Board has held that, where a claimant raises the issue of having difficulty attending a scheduled examination prior to the date of the examination and the Office fails to address those concerns, then the claimant has grounds after the suspension for challenging the propriety of the suspension of compensation.¹⁰ The Board has found, however, that the claimant must properly raise her concern prior to the scheduled examination.¹¹ In this case, appellant did not provide any reasons prior to the scheduled examination to reschedule or explain why she was unable to attend.

The record reflects that on November 21, 2006 appellant informed the Office by telephone that the reason she did not attend the August 3, 2006 scheduled appointment was because she had been in the emergency room over the weekend. However, she did not submit any evidence showing that she was unable to attend the schedule appointment. Because appellant failed to attend the August 3, 2006 medical examination and did not provide good cause for the failure within 14 days of the Office's November 13, 2006 notice of proposed suspension, the Board finds that the Office properly suspended her compensation benefits as of April 14, 2007.

On May 1, 2007 the Office denied modification of the March 20, 2007 decision and stated that appellant's compensation benefits could not be reinstated until the date of verification that she had attended and fully cooperated with a medical examination. It noted that the medical evidence submitted by appellant did not address the August 3, 2006 date or why she was unable

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

¹¹ *Id.*

to attend. Thus, it was insufficient to show that appellant had good cause for not attending the scheduled medical examination and the Office properly denied her request for modification of the suspension of her benefits.

CONCLUSION

The Board finds that the Office properly suspended appellant's compensation benefits effective April 14, 2007 as she failed to attend a scheduled medical examination without showing good cause for her refusal

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 1 and March 20, 2007 are affirmed.

Issued: January 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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