



October 26, 1990. In 1993, appellant received a third-party settlement and was returned to the periodic rolls effective September 9, 1997 when the third-party surplus was absorbed.

By letter dated May 4, 2007, the Office requested that appellant submit an updated medical report addressing his current condition, including objective clinical findings and a treatment plan. In response, appellant submitted a May 17, 2007 note from Ashley Burks, physical medicine and rehabilitation services, stating that “[appellant] has been under my care for his chronic back and hips pain.”<sup>1</sup>

On August 29, 2007 the Office referred appellant for a second-opinion evaluation, advising him of a September 12, 2007 appointment with Dr. Byron Thomas Jeffcoat, Board-certified in orthopedic surgery. On September 14, 2007 it notified him of an October 10, 2007 appointment scheduled with Dr. Elizabeth C. Henderson, a Board-certified psychiatrist. In a September 10, 2007 letter, received by the Office on September 21, 2007, appellant disagreed with the scheduled medical appointments. In letters dated September 25 and October 17, 2007, the Office was informed that appellant kept neither appointment.

On October 22, 2007 the Office proposed to suspend appellant’s compensation benefits on the grounds that he failed to appear for the examination scheduled for October 17, 2007 with Dr. Henderson. It allowed appellant 14 days to provide in writing good cause for his failure to appear and informed him of the penalty provision of section 8123(d) of the Federal Employees’ Compensation Act.<sup>2</sup>

In a letter dated September 24, 2007, received by the Office on October 31, 2007, Jeanne H. Palmer, clinical nurse specialist, advised that appellant was seen regularly in the post-traumatic stress disorder (PTSD) recovery program at the Veterans Administration (VA) Hospital in Jackson, Mississippi. In an October 26, 2007 letter, appellant stated that he cancelled the scheduled second-opinion appointments, noting that he was treated by physicians at the VA on a regular basis.

By decision dated December 21, 2007, the Office determined that the reasons provided by appellant did not establish good cause for failing to undergo examination. It finalized the proposed termination, effective December 22, 2007.

On December 29, 2007 appellant requested a hearing that was telephonically held on April 11, 2008. He described his job duties and stated that he did not attend the scheduled medical examinations because he was sick and being treated at five clinics at the VA hospital for PTSD and a heart condition. Appellant also contended that the scheduled examinations created a hardship for him and his family. He testified that he was four years past bypass surgery and his wife was hospitalized at the time of the scheduled appointments. Appellant voiced his intention to attend an appointment with Dr. Henderson and requested to be seen by an orthopedic surgeon in the Jackson area.

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<sup>1</sup> The record does not indicate whether Ms. Burks is a physician or identify her in any way.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

On April 17, 2008 appellant attended a psychiatric evaluation with Dr. Henderson. His compensation was reinstated, effective that day. By decision dated June 27, 2008, an Office hearing representative affirmed the December 21, 2007 decision.

### **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.<sup>3</sup> 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.<sup>4</sup> The Office's federal regulations at section 10.320 provide 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.

### **ANALYSIS**

The Office scheduled a second-opinion examination on October 10, 2007. Appellant did not appear for the scheduled examination and the Office suspended his compensation benefits based on his failure to appear at the October 10, 2007 examination scheduled with Dr. Henderson.<sup>8</sup> The only limitation on the Office's authority, with regard to instructing a claimant to undergo a medical examination, is that of reasonableness.<sup>9</sup> The Board has

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<sup>3</sup> 5 U.S.C. § 8123.

<sup>4</sup> *J.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1898, issued January 7, 2008).

<sup>5</sup> 20 C.F.R. § 10.320.

<sup>6</sup> 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323; *Dana D. Hudson*, 57 ECAB 298 (2006).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000); *J.T.*, *supra* note 4.

<sup>8</sup> Appellant, who lives in Yazoo City, Mississippi, has consistently argued that Dr. Jeffcoat's office in McComb, Mississippi is too far to travel and requested to be seen by an orthopedic surgeon in the Jackson area. The Office, however, offered to furnish transportation for a rescheduled examination that appellant failed to attend. Dr. Henderson's office is in a suburb of Jackson, Mississippi and appellant voiced agreement to attend examinations in the Jackson area.

<sup>9</sup> *Lynn C. Huber*, 54 ECAB 281 (2002).

interpreted the “plain meaning” of section 8123(d) to provide that compensation is not payable while a refusal or obstruction of an examination continues.<sup>10</sup>

The most recently dated medical report prior to the scheduled examinations is that of Dr. Sunhakar Madakasira, a Board-certified psychiatrist, dated October 8, 1993. By letter dated May 4, 2007, the Office requested that appellant submit an updated medical report addressing his current condition. While appellant submitted notes from Ms. Burks and Ms. Palmer, this was not competent medical evidence as they are not physicians as defined under the Act.<sup>11</sup> It was therefore reasonable for the Office to schedule a second-opinion evaluation on October 10, 2007.<sup>12</sup>

At the hearing, appellant argued that he did not attend the scheduled examination because he was sick, that his wife was hospitalized at the time of the examination and that attending would create a hardship for his family. However, he did not submit any evidence to substantiate these allegations. Appellant also argued that, because he was seen by VA physicians, he did not need to undergo a second opinion evaluation. However, as a receipt of compensation benefits under the Act, he must undergo examination as directed by the Office. Appellant’s receipt of VA benefits is not determinative as to his receipt of compensation benefits under the Act. The mandatory language of section 8123 of the Act states that an appellant “shall submit to examination” by a physician designated or approved by the Secretary of Labor, after the injury and “as frequently and at times and places as may be reasonably required.”<sup>13</sup> This means as often and at such times as places as the Office, not appellant, considers reasonably necessary.<sup>14</sup>

The Office referred appellant for a second-opinion evaluation with Dr. Henderson and advised appellant of the need for the examination, his obligation to attend and the time and place for the scheduled appointment. Appellant did not attend and the Office allowed him 14 days to provide reasons for failing to appear. The only limitation on the Office’s authority is that of reasonableness. Appellant’s referral of to an appropriate specialist at Office expense was not unreasonable. He did not provide adequate reasons for not complying and did not establish good cause for refusing to undergo the directed examination. As appellant did not provide good cause for not attending the October 10, 2007 examination, the Office properly suspended his right to compensation benefits pursuant to section 8123 of the Act.<sup>15</sup>

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<sup>10</sup> *Supra* note 6.

<sup>11</sup> Section 8101(2) of the Act provide that “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. Registered nurses, licensed practical nurses and physicians’ assistants are not “physicians” as defined under the Act and their opinions are of no probative value. *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>12</sup> *Lynn C. Huber*, *supra* note 9.

<sup>13</sup> 5 U.S.C. § 8123(a).

<sup>14</sup> *See E.B.*, 59 ECAB \_\_\_\_ (Docket No. 07-1618, issued January 8, 2008).

<sup>15</sup> 5 U.S.C. § 8123; *S.B.*, 58 ECAB \_\_\_\_ (Docket No. 06-1838, issued January 11, 2007).

**CONCLUSION**

The Board finds that the Office properly suspended appellant's right to compensation benefits beginning December 21, 2007 as he refused to attend a scheduled medical evaluation.<sup>16</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 27, 2008 and December 21, 2007 are affirmed.

Issued: April 6, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>16</sup> On appeal, appellant noted that when he was returned to the periodic rolls in April 2008, he was paid at the unaugmented 2/3 rate. The record supports that he is married and would thus be entitled to the 3/4 compensation rate.