

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Hapeville, GA, Employer)

**Docket No. 09-152
Issued: July 21, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2008 appellant filed a timely appeal from an October 8, 2008 decision of the Office of Workers' Compensation Programs affirming a suspension of compensation effective June 13, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly suspended appellant's compensation pursuant to 5 U.S.C. § 8123(d).

FACTUAL HISTORY

The case was before the Board on a prior appeal with respect to a November 6, 1990 injury.¹ Appellant filed a claim for injury on March 16, 1993 that was accepted for cervical and right shoulder strains. She received compensation for wage loss.

¹ 46 ECAB 172 (1994).

By letter dated February 21, 2008, the Office advised appellant that she would be referred for a second opinion examination to determine her current medical status. Appellant was notified of the provisions of 5 U.S.C. § 8123(d) regarding refusal to submit to or obstruction of an examination. The letter was sent to appellant's address of record. In a February 25, 2008 letter, the Office advised appellant that an appointment with Dr. Alexander Doman had been scheduled for March 25, 2008 at 2:15 p.m. The letter was also sent to appellant's address of record.

In a memorandum of telephone call dated May 8, 2008, the Office noted that Baybrook, the referral company utilized by the Office, reported that appellant did not appear for the scheduled examination. According to Baybrook, they contacted appellant who advised that she did not receive the notice of appointment, then hung up the telephone.

By letter dated May 8, 2008, the Office notified appellant that it proposed to suspend her compensation because she failed to attend the scheduled March 25, 2008 second opinion examination. Appellant was advised that she must submit in writing her reasons for failing to attend the examination and, if she did not show good cause, her compensation would be suspended under 5 U.S.C. § 8123(d).

Appellant responded in a May 18, 2008 letter: "I have in no way refused to attend the appointment on March 25, 2008. I am not REQUIRED TO ATTEND ANY SUCH MEDICAL EXAM. I do intend to attend any such appointment that I am REQUIRED TO ATTEND BASED ON MY STATUS from the two injuries on February 12, 1992 and the one on March 18, 1993. (Emphasis in the original.)" She also asserted that she did not receive notice of the scheduled examination. By letter received on May 30, 2008, appellant argued that no reason was given for the scheduled examination and therefore it was illegal.

In a memorandum of telephone call dated June 2, 2008, Baybrook indicated that it had spoken to appellant on March 18, 2008. Appellant stated that she did not get a copy of the notice of appointment. Baybrook indicated that she was advised of the scheduled appointment and a copy of the notice was mailed.

By decision dated June 13, 2008, the Office suspended appellant's compensation effective that date pursuant to 5 U.S.C. § 8123(d). Appellant requested a review of the written record. By decision dated October 2, 2008, an Office hearing representative affirmed the June 13, 2008 decision.

LEGAL PRECEDENT

5 U.S.C. § 8123(a) provides that "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." The regulations governing the administration of the Federal Employee's Compensation Act also provide that "the employee must submit to an examination by a qualified physician as often and at such times and places as the Office considers reasonably necessary."²

² 20 C.F.R. § 10.320.

To invoke 5 U.S.C. § 8123(d), 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) or failure to report for examination. The claimant must have a chance to present any objections to the Office's choice of physician or any reasons for failure to appear for the examination, before the Office acts to suspend compensation.³

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.⁴

ANALYSIS

The Office scheduled a second opinion examination on March 25, 2008. By letters dated February 21 and 25, 2008, appellant was advised of the consequences of a failure to appear for the scheduled examination. She did not appear for the scheduled examination. In accord with Office procedures, the Office advised appellant that it proposed to suspend her compensation and she had opportunity to show good cause for her failure to attend the scheduled examination.

In her response to the Office, appellant asserted that she did not receive notice of the appointment. The Board notes that the February 25, 2008 notice of the scheduled appointment contained the proper address of record for appellant. It is well established that, in the absence of evidence to the contrary, it is presumed that a notice mailed to an addressee in the ordinary course of business was received by the addressee.⁵ In addition, the referral company stated that appellant was advised by telephone of the scheduled appointment on March 18, 2008. The Board finds that the evidence of record establishes that she had notice of the March 25, 2008 scheduled examination.

Appellant also asserted that she was not required to attend the scheduled examination. In this regard she is incorrect. As noted, 5 U.S.C. § 8123(a) provides that an employee "shall submit" to an examination as frequently and at the times and places as may be reasonably required. The Office sought a second opinion to determine appellant's current medical status and her employment-related disability. It made a reasonable determination that a second opinion examination was necessary and advised appellant that she was required to attend.⁶ Appellant did

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

⁴ *Id.*

⁵ See *Larry L. Hill*, 42 ECAB 596, 600 (1991).

⁶ See *E.B.*, 59 ECAB ___ (Docket No. 07-1618, issued January 8, 2008).

not provide a valid reason for failing to appear for the scheduled March 25, 2008 examination. Since she did not show good cause for her failure to appear, the Office properly suspended her compensation under 5 U.S.C. § 8123(d).

CONCLUSION

The Board finds the Office properly suspended appellant's compensation pursuant to 5 U.S.C. § 8123(d).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 2 and June 13, 2008 are affirmed.

Issued: July 21, 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