

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

L.C., Appellant)	
)	
and)	Docket No. 11-1344
)	Issued: December 16, 2011
U.S. POSTAL SERVICE, POST OFFICE, Alvin, TX, Employer)	
)	

<i>Appearances:</i> Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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ORDER REVERSING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

By letter received on May 12, 2001, appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) January 31 and March 7, 2011 merit decisions suspending her compensation benefits for obstructing a medical examination pursuant to 5 U.S.C. § 8123(d). The appeal was docketed as No. 11-1344. After considering the evidence of record, the Board finds that the January 31 and March 7, 2011 decisions must be reversed.

OWCP accepted appellant's March 30, 2006 occupational disease claim for bilateral carpal tunnel syndrome and lesion of the left ulnar nerve and placed her on the periodic rolls. On December 9, 2009 it referred appellant to Dr. Gary Freeman, a Board-certified orthopedic surgeon, for a second opinion examination. The record reflects that appellant appeared with her husband for the December 21, 2009 examination. In his December 21, 2009 report, Dr. Freeman provided examination findings and opined that appellant could return to full duty. He stated, however, that he was unable to complete the evaluation because of the abusive, inappropriate, argumentative, challenging and threatening behavior of appellant's husband, who was present with his permission.

By letter dated January 5, 2011, OWCP advised appellant that it proposed to suspend her compensation benefits because she failed to cooperate with a scheduled medical examination on December 21, 2009 as directed. Appellant was advised to submit valid reasons for her failure to cooperate in writing within 14 days. OWCP also informed appellant that it was in the process of

scheduling a new appointment with another doctor and that her husband was not authorized to attend the appointment.

In a separate letter dated January 5, 2011, OWCP instructed appellant to report to Dr. Donald M. Mauldin, a Board-certified orthopedic surgeon, for a second opinion examination on January 27, 2011. In letters dated January 12, 2011, appellant asked that her examination be rescheduled to allow time for her to obtain the medical record. The record reflects that OWCP informed appellant by telephone that it would not postpone her scheduled examination. On January 31, 2011 it was notified that appellant failed to attend the January 27, 2011 appointment with Dr. Mauldin. By decision dated January 31, 2011, OWCP finalized the suspension of appellant's compensation benefits effective February 13, 2011, finding that she failed to attend, or obstructed, an examination directed by OWCP on January 27, 2011 with Dr. Mauldin.

On February 22, 2011 appellant requested reconsideration of the January 31, 2011 decision. By decision dated March 7, 2011, OWCP denied modification of the January 31, 2011 decision, finding that she failed to introduce any persuasive argument or medical evidence establishing that she was physically unable to attend the January 27, 2011 appointment.

Section 8123 of the Federal Employees' Compensation Act (FECA) authorizes OWCP to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary.¹ 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 OWCP.² OWCP's regulations provide that a claimant must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary.³ Section 8123(d) of FECA and section 10.323 of OWCP's regulations provide that, if an employee refuses to submit to, or obstructs, a directed medical examination, her right to compensation is suspended until the refusal or obstruction ceases.⁴ The procedures further provide that before OWCP may invoke these provisions, the employee is to be afforded a period of 14 days within which to present in writing her reasons for the refusal or obstruction.⁵ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.⁶

The Board finds that OWCP did not properly suspend appellant's compensation because it did not follow established procedures. On January 5, 2011 OWCP proposed to suspend appellant's wage-loss compensation for obstruction of Dr. Freeman's December 21, 2009 examination, which he was reportedly unable to complete due to the abusive behavior of appellant's husband. Simultaneously, OWCP scheduled a new appointment on January 27, 2011 with Dr. Mauldin, which appellant failed to attend. In its January 31, 2011 decision,

¹ 5 U.S.C. § 8123.

² See *Lynn C. Huber*, 54 ECAB 281 (2002).

³ 20 C.F.R. § 10.320.

⁴ 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323; see *Alfred R. Anderson*, 54 ECAB 179 (2002).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

⁶ *Id.*

OWCP finalized the suspension of compensation based on her failure to appear at the January 27, 2011 examination. The March 7, 2011 decision denied modification of the January 31, 2011 decision, finding that appellant had failed to establish a valid reason for failing to attend the January 27, 2011 examination. Neither decision addressed appellant's alleged obstruction of the December 21, 2009 examination with Dr. Freeman, which was the subject of OWCP's January 5, 2011 proposal to suspend compensation.

As noted, OWCP procedures require that a claimant be given 14 days within which to present in writing her reasons for refusing to attend a scheduled medical examination before the provisions of section 8123(d) may be invoked.⁷ While appellant received appropriate notice regarding the alleged obstruction of the December 2009 appointment, she was not given the required 14-day notice following the missed evaluation of January 27, 2011.⁸ Accordingly, the Board finds that OWCP erred in suspending her right to compensation benefits based on notice pertaining to the December 2009 examination.⁹

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 7 and January 31, 2011 decisions are reversed.

Issued: December 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ *Id.* The Board notes that notice of a proposed suspension based on the missed January 27, 2011 appointment was given on the same date the suspension was finalized.

⁹ *J.C.*, Docket No. 09-609 (issued January 5, 2010).