

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

C.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS CANTEEN SERVICE,)
Lake City, FL, Employer)

Docket No. 11-1366
Issued: December 12, 2011

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 9, 2011 appellant filed a timely appeal from an April 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which suspended her compensation for failure to report for a medical examination. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether OWCP properly suspended appellant's compensation under 5 U.S.C. § 8123(d) for failure to attend a medical examination on March 21, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 10, 2007 appellant, then a 40-year-old supply clerk, filed a traumatic injury claim alleging that, on July 30, 2007, she sprained her lower back when she lifted a case of bottled water at work. OWCP accepted her claim for sprained back, displacement of lumbar intervertebral left disc and spinal stenosis.

On September 8, 2008 appellant was placed on the periodic rolls for temporary total disability.

On January 26, 2011 OWCP referred appellant for a second-opinion examination to address the nature of her condition, extent of disability and appropriate treatment. Appellant was advised that if she failed to keep the scheduled appointment she was to inform OWCP in writing within seven days. She was also informed that her compensation could be suspended for failure to attend the examination or for obstruction of the examination.

In a properly addressed letter dated February 15, 2011, OWCP informed appellant that an appointment was made with Dr. Steven J. Lancaster, a Board-certified orthopedic surgeon, at 4:30 p.m. on March 21, 2011. This letter was addressed to appellant at her address of record.

On March 31, 2011 OWCP was informed that appellant did not show up to the scheduled appointment.

On March 31, 2011 OWCP proposed to suspend appellant's compensation benefits pursuant to section 8123(d) of FECA for failure to attend the March 21, 2011 examination with Dr. Lancaster. Appellant was advised to provide a written explanation of her reasons, with substantive corroborating evidence, within 14 days for failing to attend the scheduled examination.

In an April 8, 2011 letter, appellant stated that she missed the March 21, 2011 appointment with Dr. Lancaster because she did not receive an appointment letter and was not aware it was scheduled. She also submitted a March 25, 2011 physician's assistant report.

By decision dated April 20, 2011, OWCP finalized its proposed suspension, effective May 8, 2011. It addressed appellant's April 8, 2011 letter in which she stated she did not receive the appointment letter and found that the letter was sent to the address of record. OWCP also stated that, in the absence of contrary evidence, a notice mailed to an individual in the ordinary course of business was presumed received by that individual. OWCP informed appellant that her compensation would be reinstated after she attended and fully cooperated with an examination.

LEGAL PRECEDENT

Section 8123 of 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.² The determination of the need for an examination, the type of examination, the choice of locale,

² 5 U.S.C. § 8123.

and the choice of medical examiners are matters within the province and discretion of OWCP.³ OWCP regulations provide that a claimant must submit to an examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary.⁴ Section 8123(d) of FECA and OWCP 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.⁵ OWCP procedures provide that, before OWCP may invoke these provisions, the employee is to be provided a period for 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 FECA.⁷

In the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business, such as in the course of OWCP's daily activities, is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.⁸

ANALYSIS

OWCP scheduled a second opinion examination on March 21, 2011. Appellant did not appear for the scheduled examination. By decision dated April 20, 2011, OWCP suspended her compensation for failure to attend the scheduled examination. The Board finds that it properly suspended appellant's compensation for failure to attend a medical examination on March 21, 2011.

Appellant alleges that she did not receive the February 15, 2011 appointment letter which informed her of her scheduled March 21, 2011 second-opinion examination. Under the mailbox rule, however, it is presumed that a letter properly addressed and mailed to an individual in the ordinary course of business arrived at that address.⁹ The record in this case reveals a properly addressed copy of the February 15, 2011 appointment notice informing appellant about the scheduled March 21, 2011 examination. The Board finds that there is no evidence to rebut the presumption of receipt by appellant under the mailbox rule. Because appellant failed to attend the March 21, 2011 medical examination and did not provide good cause for the failure within 14 days of OWCP's March 31, 2011 notice of proposed suspension, OWCP properly suspended her compensation benefits effective May 8, 2011.

³ *J.T.*, 59 ECAB 293 (2008); *S.B.*, 58 ECAB 267 (2007); *James C. Talbert*, 42 ECAB 974 (1991).

⁴ 20 C.F.R. § 10.320.

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

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

⁷ *Id.*

⁸ *C.D.*, Docket No. 11-598 (issued September 23, 2011); *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

⁹ *Id.*

Entitlement to compensation was properly suspended in accordance with 5 U.S.C. § 8123(d) until the date on which the claimant agrees to attend the examination. When the claimant actually reports for examination, payment retroactive to the date on which the claimant agreed to attend the examination may be made.¹⁰

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits effective May 8, 2011 for failure to attend a medical examination.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 20, 2011 is affirmed.

Issued: December 12, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *E.B.*,59 ECAB 298 (2008).