



belt. The Office accepted appellant's claim for a lumbosacral sprain, a displacement of a lumbar intervertebral disc and a sprain of other specified sites.<sup>2</sup> Appellant stopped work after the injury, returned to work intermittently and then stopped work on October 22, 2004 following a recurrence of disability. Thereafter, she received wage-loss compensation for total disability.<sup>3</sup>

By letter dated September 24, 2009, the Office informed appellant that a second-opinion evaluation was needed to evaluate her condition. It advised her that her compensation benefits could be suspended if she did not keep the appointment.

In a September 25, 2009 letter, QTC Medical Services, Inc., the medical appointment scheduler, notified appellant that she was scheduled for an October 19, 2009 appointment with Dr. Christopher Cenac, Board-certified in orthopedic surgery.

In a letter dated October 19, 2009, the Office was informed that appellant did not keep her appointment on that date.

On November 10, 2009 the Office proposed to suspend appellant's compensation benefits on the grounds that she failed to appear for the examination scheduled for October 19, 2009 with Dr. Cenac. It allowed appellant 14 days to provide in writing good cause for her failure to appear and informed her of the penalty provision of section 8123(d) of the Act.

A November 10, 2009 email reflects that appellant telephoned the Office to request that her appointment be rescheduled. No reason was provided for her failure to appear. The appointment was rescheduled for December 14, 2009.<sup>4</sup>

By decision dated December 17, 2009, the Office finalized the proposed suspension, effective December 20, 2009. The Office noted that it directed appellant to report for the examination scheduled on October 19, 2009 but she did not attend the examination nor did she provide a written explanation of her failure to attend within 14 days of the office's November 10, 2009 letter.

### **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>5</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

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<sup>2</sup> Appellant had several conditions that were not work related. These included cervical facet syndrome, thoracic facet syndrome, hysterectomy and cholecystectomy. Appellant was involved in a nonwork automobile accident on October 30, 2006 that caused injury to her cervical, thoracic and lumbar spine. She also had a fall and broke her right ankle on September 22, 2006. Appellant had surgery and the cast was removed on October 25, 2006.

<sup>3</sup> On September 22, 2003 appellant underwent a work-related laminectomy and discectomy at L4-5. She underwent a work-related interbody lumbar fusion and decompressive lumbar laminectomy revision at L4-5 on September 28, 2005.

<sup>4</sup> The record reflects that she failed to keep this appointment.

<sup>5</sup> 5 U.S.C. § 8123.

discretion of the Office.<sup>6</sup> The Office 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 it considers reasonably necessary.<sup>7</sup> Section 8123(d) of the Act and section 10.323 of its 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.<sup>8</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 her reasons for the refusal or obstruction.<sup>9</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 19, 2009 with Dr. Cenac. Appellant did not appear for the scheduled examination. The Office suspended her compensation benefits based on her failure to appear. 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. The only limitation on the Office's authority, with regard to instructing a claimant to undergo a medical examination, is that of reasonableness.<sup>10</sup> The Board has 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>11</sup>

On September 24, 2009 the Office advised appellant that it would refer her for a second opinion examination and that, if she did not keep the appointment, her benefits could be suspended. On September 25, 2009 appellant was referred for a second-opinion evaluation with Dr. Cenac and advised her of the need for the examination and the time and place for the scheduled appointment. Appellant did not attend the scheduled October 19, 2009 appointment. The Office subsequently allowed her 14 days to provide reasons for failing to appear. Again appellant did not respond. Although the record contains an email noting that appellant telephoned the Office to request that her appointment be rescheduled, she did not provide any reason for missing the scheduled October 19, 2009 appointment. As she did not respond to the proposed suspension, appellant has not established good cause for refusing to undergo the October 19, 2009 examination. The Office properly suspended appellant's right to compensation benefits pursuant to section 8123 of the Act.<sup>12</sup>

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<sup>6</sup> *J.T.*, 59 ECAB 293 (2008).

<sup>7</sup> 20 C.F.R. § 10.320.

<sup>8</sup> 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323; *Dana D. Hudson*, 57 ECAB 298 (2006).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000); *J.T.*, *supra* note 6.

<sup>10</sup> *Lynn C. Huber*, 54 ECAB 281 (2002).

<sup>11</sup> *Supra* note 11.

<sup>12</sup> 5 U.S.C. § 8123; *S.B.*, 58 ECAB 267 (2007).

On appeal, appellant asserted that she was under emotional and financial distress during the period October 2009 to June 11, 2010 and that she was now in a better state mentally. This alone is insufficient to explain her failure to appear at the time of the scheduled October 19, 2009 examination. Thus, the Board finds that the Office properly suspended appellant's right to compensation benefits pursuant to section 8123 of the Act.

**CONCLUSION**

The Board finds that the Office properly suspended appellant's right to compensation benefits effective December 20, 2009 because she refused to attend a scheduled medical evaluation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 17, 2009 be affirmed.

Issued: March 24, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board