

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

D.B., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Chicago, IL, Employer**

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**Docket No. 13-175
Issued: April 23, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 31, 2012 appellant filed a timely appeal from an August 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) suspending his compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 OWCP properly suspended appellant's compensation benefits effective August 26, 2012 due to his failure to attend a scheduled medical examination.

FACTUAL HISTORY

On June 30, 2004 appellant, then a 40-year-old screener, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back and leg injury on that same date when he was

¹ 5 U.S.C. § 8101 *et seq.*

lifting a passenger bag to the screening table and felt a sharp pain in his lower back that ran down his legs. OWCP accepted his claim for lumbar strain, sciatica and aggravation of degenerative disc disease at the L5-S1 level. Appellant was paid medical and wage-loss benefits.

Appellant returned to full duty on July 1, 2006 and then stopped work in August 2006 following a recurrence of disability. He received wage-loss compensation for temporary total disability.²

By letter dated June 6, 2012, OWCP notified appellant and his representative that a second-opinion examination was needed to address the nature of his condition, extent of disability and appropriate treatment. Appellant was advised that, if he refused to attend or obstructed the examination, his compensation could be suspended under 5 U.S.C. § 8123(d). In a letter of the same date, QTC Medical Services, Inc., the medical appointment scheduler, notified him that he was scheduled for an appointment with Dr. Allan Brecher, a Board-certified orthopedic surgeon, at 10:00 a.m. on July 11, 2012.

By letter dated July 11, 2012, OWCP was informed that appellant did not keep his appointment on that date.

On July 12, 2012 OWCP proposed to suspend appellant's compensation benefits pursuant to section 8123(d) of FECA for failure to attend the July 11, 2012 examination with Dr. Brecher. Appellant was advised to provide a written explanation of his reasons, with substantive corroborating evidence, within 14 days for failing to attend the scheduled examination. He did not respond.

By decision dated August 22, 2012, OWCP finalized its proposed suspension, effective August 26, 2012. It noted that it directed appellant to report for the examination scheduled on July 11, 2012, but he did not attend the examination or provide a written explanation of his failure to attend within 14 days of OWCP's July 12, 2012 letter.

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.³ 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.⁴ 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.⁵

² On January 25, 2005 appellant underwent a posterior lumbar fusion of L4-S1. He also underwent a trial percutaneous lead place for spinal cord stimulator on December 6, 2007 and an implant spinal cord stimulator on April 14, 2008.

³ 5 U.S.C. § 8123.

⁴ *J.T.*, 59 ECAB 293 (2008); *S.B.*, 58 ECAB 267 (2007); *James C. Talbert*, 42 ECAB 974 (1991).

⁵ 20 C.F.R. § 10.320.

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.⁶ 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.⁷ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.⁸

ANALYSIS

OWCP scheduled a second-opinion examination on July 11, 2012 with Dr. Brecher. Appellant did not appear for the scheduled examination. By decision dated August 22, 2012, OWCP suspended his compensation benefits based on his failure to appear. The Board finds that it properly suspended appellant's compensation for failure to attend a medical examination on July 11, 2012.

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. The only limitation on OWCP's authority, with regards to instructing a claimant to undergo a medical examination, is that of reasonableness.⁹ 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.¹⁰

On June 6, 2012 OWCP advised appellant and his representative that it would refer him for a second-opinion examination and that, if he did not keep the appointment, his benefits could be suspended. Appellant was referred for a second-opinion evaluation with Dr. Brecher and was advised of the need for the examination and the time and place for the scheduled appointment. He did not attend the scheduled July 11, 2012 appointment. OWCP subsequently allowed appellant 14 days to provide reasons for failing to appear. Again, appellant did not respond. As he did not respond to the proposed suspension, he has not established good cause for refusing to undergo the July 11, 2012 examination. OWCP properly suspended appellant's right to compensation benefits pursuant to section 8123 of FECA.¹¹

On appeal, appellant asserts that he would be submitting a list of mistakes committed by OWCP. He argued that the claims examiners were biased and that his case was handled poorly. This alone is insufficient to explain appellant's failure to appear at the time of the scheduled

⁶ *Supra* note 3; 20 C.F.R. § 10.323; *Dana D. Hudson*, 57 ECAB 298 (2006).

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

⁸ *Id.*

⁹ *Lynn C. Huber*, 54 ECAB 281 (2002).

¹⁰ *M.B.*, Docket No. 10-1755 (issued March 24, 2011).

¹¹ *Supra* note 3; *S.B.*, 58 ECAB 267 (2007).

July 11, 2012 examination as it has been established that OWCP followed proper procedures in notifying appellant. Moreover, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.¹² Evidence submitted by appellant after the final decision cannot be considered by the Board.

Thus, the Board finds that OWCP properly suspended entitlement to compensation in accordance with 5 U.S.C. § 8123 until the date on which appellant agrees to attend the examination. When appellant actually reports for examination, payment retroactive to the date on which he agreed to attend the examination may be made.¹³

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits effective August 26, 2012 for failure to attend a medical examination.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹² 20 C.F.R. § 501.2(c)(1).

¹³ C.S., Docket No. 11-1366 (issued December 12, 2011); *E.B.*, 59 ECAB 298 (2008).