

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

_____)
D.J., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Oklahoma City, OK, Employer)

_____)

Docket No. 13-64
Issued: August 5, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On October 10, 2012 appellant filed a timely appeal from a June 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 reinstated appellant's compensation effective June 30, 2008 following a suspension of benefits under 5 U.S.C. § 8123(d).

FACTUAL HISTORY

This case has previously been on appeal before the Board. By decision dated September 26, 2003, OWCP suspended appellant's compensation benefits due to her failure to

¹ 5 U.S.C. § 8101 *et seq.*

attend a medical examination. On June 30, 2008 appellant inquired of OWCP how to reinstate her benefits and filed a request for reconsideration. By decision dated October 3, 2008, OWCP denied her request as untimely and that it failed to establish clear evidence of error. An appeal was filed with the Board. In a January 15, 2010 decision, the Board found that OWCP had improperly treated appellant's June 30, 2008 inquiry as an untimely request for reconsideration.² The Board found that the reconsideration should have been adjudicated on whether appellant's benefits should remain suspended. By decision dated February 15, 2011, OWCP found that appellant's June 30, 2008 appearance at OWCP's office constituted her agreement to comply with the request to attend her second opinion examination and reinstated compensation benefits effective that date. It also found that appellant was not eligible for compensation during the period of obstruction, October 5, 2003 through June 29, 2008. The Board affirmed OWCP's decision on March 15, 2012.³ The facts and history contained in the prior appeals are incorporated by reference.

In the interim, appellant received compensation for the period June 30, 2008 through March 12, 2011. Her compensation benefits were again terminated effective March 13, 2011.⁴

Subsequent to the Board's decision, in a letter dated March 20, 2012, appellant requested reconsideration. She informed OWCP that she was submitting a copy of the Board's decision and requested reinstatement of her compensation.

On March 26, 2012 OWCP received a September 22, 2011 report from Dr. Jeanie L. Klabzuba, an osteopath and family practitioner, which indicated that appellant had a medical need for a leave of absence from her worksite, based on her diagnosis of post-traumatic stress disorder (PTSD), for an unknown period of time. She advised that appellant continued to have PTSD, related symptoms of stress, inability to sleep, inability to control her emotions and depression and could not return to work.

In a letter dated April 25, 2012, appellant informed OWCP that her name had changed.

In a letter dated May 1, 2012, appellant requested the status of her request for reconsideration. In a letter dated May 16, 2012, appellant provided OWCP with a copy of her birth certificate and documentation to show her name change, a direct deposit sign-up form and information pertaining to an Equal Employment Opportunity Commission decision.

By decision dated June 27, 2012, OWCP affirmed its February 15, 2011 decision regarding the date of reinstatement of appellant's eligibility for compensation following the suspension of her benefits.

² Docket No. 09-602 (issued January 15, 2010).

³ Docket No. 11-1899 (issued March 15, 2012). The Board's decision on this matter became final 30 days from the date of the filing of the decision. See 20 C.F.R. § 501.6(d). The issue is thus *res judicata* and is not subject to further consideration by the Board in this appeal. See *Hugo A. Mentink*, 9 ECAB 628 (1958); see also *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998) (in the absence of further review by OWCP on the issue addressed by a Board decision, the subject matter reviewed is *res judicata* and is not subject to further consideration by the Board).

⁴ Appellant did not appeal the termination decision.

LEGAL PRECEDENT

FECA provides that, if an employee refuses to submit to or obstructs an examination, his or her right to compensation is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.⁵ The plain meaning of this language is that compensation is forfeited for the period of the refusal or obstruction.⁶

OWCP procedures state that, 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. Such agreement may be expressed in writing or by telephone (documented on Form CA-110). When the claimant actually reports for examination, payment retroactive to the date on which the claimant agreed to attend the examination may be made.⁷

ANALYSIS

The record reflects that OWCP suspended appellant's compensation, effective October 5, 2003, for refusal to attend a scheduled second opinion examination. The Board notes that OWCP reinstated appellant's benefits effective June 30, 2008.

On reconsideration, appellant provided OWCP with a copy of the Board's prior decision and requested reinstatement of her compensation. She also informed OWCP that her name had changed. The Board notes that this information is irrelevant to the date compensation benefits would resume. Appellant made other arguments to the contrary.⁸

Appellant also provided a March 26, 2012 report from Dr. Klabzuba, who generally indicated that she had a medical leave of absence due to her PTSD for an unknown period of time. Dr. Klabzuba did not specifically address appellant's ability to undergo a scheduled medical examination. The Board finds that this report is insufficient to show that benefits should have been reinstated any earlier than June 30, 2008. There was no evidence submitted on reconsideration showing that any earlier date was appropriate.

⁵ 5 U.S.C. § 8123(d).

⁶ *William G. Saviolidis*, 37 ECAB 174 (1985). The employee will forfeit compensation otherwise paid or payable under FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. § 8129. See 20 C.F.R. § 10.323 (the penalties for failing to report for or obstructing a second opinion or referee examination).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d),(e) (September 2010). See *Sharon Handy*, 57 ECAB 446 (2006).

⁸ To the extent that appellant seeks reinstatement of compensation benefits that were terminated in OWCP's February 15, 2011 termination decision, the Board notes that it does not have jurisdiction over this decision. See 20 C.F.R. § 501.3(e).

CONCLUSION

The Board finds that OWCP properly reinstated appellant's compensation benefits, effective June 30, 2008.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board