

factors of his federal employment. OWCP accepted the claim for a herniated disc at L5-S1. Appellant sustained intermittent periods of disability until he stopped work on April 1, 1998. OWCP paid him compensation for total disability beginning June 20, 1998.

By letter dated May 14, 2013, OWCP referred appellant, who lives in Indiana, to Dr. Sukhjit S. Purewal, a Board-certified orthopedic surgeon practicing in Perrysburg, OH, for a second opinion examination scheduled for June 3, 2013 at 10:00 a.m. It advised him that the failure to keep, refusal to submit to, or obstruction of the examination could result in suspension of his right to compensation under section 8123(d) of FECA. OWCP further informed him that compensation was not payable while the refusal or obstruction continued and that the period of the refusal or obstruction would be deducted from the period for which compensation was payable.

In a letter dated May 31, 2013, received by OWCP on June 5, 2013, appellant related that he could not attend the appointment because he was not feeling well and it would “be at least a four-hour round trip.”² He asserted that appointments should not be more than a 15-minute drive and noted that around 20 doctors have indicated that he could not work. Appellant further indicated that he could not drive.

Appellant did not attend the June 3, 2013 appointment with Dr. Purewal.

On June 10, 2013 OWCP proposed to suspend appellant’s compensation benefits on the grounds that he failed to report for the scheduled June 3, 2013 examination. It advised him that the reasons he provided in the May 31, 2013 statement for missing the appointment were insufficient to excuse his failure to attend the appointment. OWCP noted that it would pay for mileage to the appointment or for a taxi service. It allowed appellant 14 days to provide a written statement containing a valid reason for failing to submit to the examination. OWCP informed him that, if he did not show good cause, it would suspend his entitlement to compensation under section 8123(d) until after he attended and fully cooperated with the examination.

In a June 18, 2013 response written by appellant’s wife, she related that his inability to travel four hours was “a very good reasons not to travel.” They were also quite ill at the time with “almost constant coughing, sneezing, [and] absolutely no energy at all.” She was unable to drive her husband to another state because of her illness and asserted that her husband had never been reimbursed for mileage. Appellant and his wife maintained that physicians’ reports indicated that he could only travel 15 minutes there and back to an appointment.

In a February 29, 2008 work restriction evaluation, Dr. Thomas L. Lazoff, a Board-certified physiatrist, found that appellant could operate a motor vehicle for under 30 minutes. In a May 20, 2009 work restriction evaluation, Dr. Robert Ellis, a Board-certified orthopedic

² The letter was signed by appellant but written in the third person. The record also contains the same letter dated May 13, 2013, received by OWCP on June 21, 2013. Appellant indicated that he was resubmitting the letter with his signature. It appears that the May 13, 2013 date on the letter is a typographical error given that OWCP did not refer appellant to Dr. Purewal until May 14, 2013.

surgeon, indicated that he could operate a motor vehicle to and from work for less than 30 minutes.

By decision dated June 25, 2013, OWCP suspended appellant's compensation benefits effective June 29, 2013. It determined that his reasons for failing to attend the examination were insufficient to establish good cause. OWCP advised appellant that his benefits would be reinstated after verification that he attended and fully cooperated with the examination.

On appeal appellant argues that it was improper for OWCP to schedule an appointment over 200 miles from his residence. He noted that he did not drive and his physicians indicated that he could not drive over 30 minutes per four-hour periods. Appellant asserted that he had never been reimbursed for travel.

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 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 suspended appellant's compensation effective June 29, 2013 under section 8123(d) of FECA on the grounds that he failed to attend a scheduled medical examination. 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

³ 5 U.S.C. § 8123.

⁴ See *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.

⁶ 5 U.S.C. § 8123(d); 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 2.810.13(d)(3) (September 2010).

⁸ *Id.*

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

The Board finds that OWCP properly suspended compensation benefits. In a letter dated May 14, 2013, OWCP notified appellant of the second opinion examination scheduled with Dr. Purewal on June 3, 2013. It advised him of his rights and responsibilities with respect to the scheduled examination and warned him that his benefits may be suspended under section 8123(d) of FECA if he failed to report for the examination without an acceptable reason.

Appellant did not appear for his June 3, 2013 appointment. OWCP procedures provide that, if a claimant does not report for a scheduled appointment, he should be asked to provide a written explanation within 14 days to determine whether he has established good cause for failure to appear.¹¹ In a note dated May 31, 2013 and received by OWCP on June 5, 2013, he argued that he could not attend the appointment as he was not feeling well and as it was a four-hour round trip. Appellant maintained that he had been examined by multiple physicians and that he could not drive. He objected to the distance of the appointment from his home. OWCP, however, advised him that it would pay for a taxi service or mileage to the appointment. Appellant submitted work restriction evaluations indicating that he could not operate a motor vehicle for more than 30 minutes; however, he did not submit any evidence that he had any limitations as a passenger in a motor vehicle. He also argued that he and his wife were ill at the time of the scheduled examination but did not submit any medical evidence supporting this allegation. Appellant further indicated that he had been examined by around 20 physicians; however, as discussed, the need for an examination is a matter within the discretion of OWCP.¹² The Board finds that appellant did not provide good cause for failing to appear at the June 3, 2013 scheduled examination.

On appeal appellant argues that OWCP erred in scheduling an appointment over 200 miles round trip from his residence. He did not, however, submit any evidence substantiating his allegation. In *Gardner*,¹³ the Board held that OWCP may refer a claimant to a distant city for a referral examination after documenting that there are no appropriate specialists in the claimant's geographical location. Unlike in *Gardner*, however, OWCP did not receive appellant's statement challenging the referral for the examination based on the distance from his residence until after the scheduled appointment. Appellant raised the argument in a note dated May 31, 2013 but received by OWCP on June 5, 2013.¹⁴ Moreover, in *Gardner* the scheduled

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

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

¹¹ See *supra* note 7.

¹² See *Erwin L. Barnhart*, 33 ECAB 150 (1981). 5 U.S.C. § 8123(a) provides that an employee shall submit to examination by a medical officer of the United States or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may reasonably be required.

¹³ *Billie J. Gardner*, 53 ECAB 356 (2002).

¹⁴ See *Gustavo H. Mazon*, 49 ECAB 156 (1997) (finding that a claimant must properly raise his or her concerns prior to a scheduled examination).

appointment was over 400 miles from the claimant's residence, while appellant claimed Perrysburg, OH is only 200 miles round trip from appellant's home.

Appellant contends that he was unable to drive for more than 30 minutes at a time; however, as discussed, the medical evidence does not show that he was unable to ride as a passenger. OWCP informed him that it would reimburse him for mileage to the appointment or for a taxi service. The fact that appellant was not previously reimbursed for travel expenses is not relevant.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits effective June 29, 2013 under 5 U.S.C. § 8123(d) due to his failure to attend a scheduled medical examination.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board