

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

B.C., Appellant)	
)	
and)	Docket No. 12-1904
)	Issued: February 1, 2013
U.S. POSTAL SERVICE, INJURY)	
COMPENSATION OFFICE, Newark, NJ,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2012 appellant filed a timely appeal from an August 17, 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 suspended appellant's right to compensation pursuant to section 8123(d) of FECA on the grounds that she refused to submit to a directed medical examination.

On appeal appellant asserted that she cannot understand why she needs to attend the scheduled examination and would like her claim to be accepted for tendinitis.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board.² The underlying merit issue is whether appellant sustained a recurrence of disability on December 8, 2010 caused by accepted right carpal tunnel syndrome. In an April 19, 2012 decision, the Board found the case not in posture for decision because the medical evidence required further development. The attending physicians, Dr. Michael D. Merkin, a Board-certified neurologist, and Dr. Alexander M. Marcus, a Board-certified hand surgeon, submitted evidence that required further development of the medical record. The Board remanded the case to OWCP to refer appellant, an updated statement of accepted facts and the medical record to an appropriate Board-certified specialist to address whether she sustained a recurrence of disability on December 20, 2010 due to the accepted right carpal tunnel syndrome. The referral physician was to also advise as to whether the diagnosed right wrist tendinitis was employment related. The law and facts of the previous Board decision are incorporated herein by reference.

On June 18, 2012 OWCP referred appellant to Dr. Jeffrey Pollock, a Board-certified neurologist, for a second-opinion evaluation. Dr. Pollock was provided an updated statement of accepted facts and a set of questions as to whether appellant sustained a recurrence of disability on December 15, 2010 due to the accepted right carpal tunnel syndrome and whether the diagnosis of right wrist tendinitis was employment related. The examination was scheduled for July 5, 2012. Appellant was informed of her responsibilities to attend the examination, and that her right to compensation could be suspended for failure to attend the examination. On July 2, 2012 she telephoned OWCP, stating that she could not attend the examination because she was on vacation. Appellant called again on July 3, 2012 to advise that she had returned to full-time work and would not further pursue the claim. She did not attend the examination scheduled with Dr. Pollock on July 5, 2012.

By letter dated July 6, 2012, OWCP asked appellant to submit a response as to why she did not attend the examination. Appellant was given 14 days to respond. She did not respond to the July 6, 2012 notice.

In an August 17, 2012 decision, OWCP informed appellant that her claim for a December 15, 2010 recurrence was being closed because she did not cooperate with a directed examination scheduled with Dr. Pollock on July 5, 2012. It noted that she had not provided an explanation for her failure to attend the examination or ask that it be rescheduled. OWCP advised appellant that if she wished to attend an examination, she should submit a written statement and, at that time, the case would be reopened.

² Docket No. 11-1945 (issued April 19, 2012). On September 10, 2008 OWCP accepted that appellant, then a 41-year-old health and resource management specialist, sustained employment-related right carpal tunnel syndrome. On December 20, 2010 appellant filed a recurrence claim, stating that she sustained a recurrence of disability on December 15, 2010 and filed claims for wage-loss compensation beginning that day. She indicated that she was not claiming monetary compensation after March 15, 2011 and requested that right wrist tendinitis be accepted.

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 at section 10.320 provide that a claimant must submit to 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 section 10.323 of 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 of 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

The Board finds that appellant has not established good cause for her failure to attend the scheduled medical appointment with Dr. Pollock. Appellant provided no reason for refusing to attend the appointment, other than to state she was on vacation. She did not respond to the July 6, 2012 notice. Appellant asserts on appeal that the directed medical examination was not needed and that her tendinitis should be accepted as employment related. In its prior decision, the Board instructed OWCP to obtain a second-opinion evaluation on the issues of her claimed recurrence of disability in December 2010 and the diagnosis of tendinitis as employment related.⁹ OWCP asked Dr. Pollock to provide an opinion on these issues. As noted, 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.¹⁰ There is no evidence that OWCP abused its discretion in directing the medical examination.

³ 5 U.S.C. § 8123.

⁴ *J.T.*, 59 ECAB 293 (2008).

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) (September 2010); *J.T.*, *supra* note 4.

⁸ *Id.*

⁹ *Supra* note 2.

¹⁰ *Supra* note 4.

Appellant has not submitted any evidence that she was incapable of attending the medical examination scheduled on July 6, 2012. The Board finds that OWCP properly suspended her right to future compensation benefits on August 17, 2012.¹¹

CONCLUSION

The Board finds that OWCP properly suspended appellant's right to compensation benefits on August 17, 2012, as she failed to attend a scheduled medical examination without showing good cause for her refusal.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

¹¹ See *P.K.*, Docket No. 12-721 (issued September 14, 2012).