



December 22, 2000 it granted appellant schedule awards for 72 percent impairment of her left arm and 58 percent impairment of her right arm.

On January 21, 2013 OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedist, for a second opinion evaluation on the extent of her permanent impairment. It notified appellant that, if she obstructed the examination scheduled for February 1, 2013, her benefits would be suspended in accordance with 5 U.S.C. § 8123(d):

“If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter 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.”

Dr. Smith advised OWCP that appellant appeared on time for her examination; however, she refused to fill out or sign the short intake form and became belligerent with the staff. “Therefore, the encounter was terminated and she left. Appellant was never examined because of failure to fill out our one[-]page intake form or sign the examination consent form and her belligerent nature.”

Appellant telephoned OWCP to report that she was given paperwork to complete and sign, but she refused. She contended that the physician should have already known the answers to the questions. Appellant was then told that Dr. Smith would not examine her. She considered possibly completing and signing the questionnaire, but she was told that the specialist would not see her because she had refused.

Appellant wrote OWCP to explain further. She thought the referral was “asinine” and that she was apprehensive because others had told her such evaluations were never favorable. Also, appellant had a virus.

“When I arrived at the office I was asked to sign (2) papers I signed one paper which I understood to be a HIPAA form. The other form was a patient information form which I opted not to sign because I felt that the information requested on the form should have been sent to the doctor to read before I saw him and I stated that to the person who did my intake. Her response to me was that I should sign it and leave the questions blank. I opted not to do this, because why would I leave blank spaces on a form for a doctor to fill in if I don’t think that he will act in my best interest? At this time the female intake person went into a back room and came out and told me that I was free to go because I had not signed the form and the doctor would not see me. At this point I said that I would sign the form so that I would not have wasted a day coming to the office. This person did not respond to my comment, she just walked back to the office where she was when I first entered. Because she was taking a while to give me the form which I thought she was going to do, I walked over to the desk where she was to ask for the form. She finished her telephone call and told me that I was free to leave because she had called the main office and was told that since I had refused to sign the form the doctor would not see me and I was free to go, so I left.

Because I felt threatened and also that my rights were disregarded since it has already been determined that I have a permanent work-related injury as well as a recent doctor's narrative that this was not a process that I should be undergoing."

In a follow-up letter, appellant disagreed with Dr. Smith's assertion that she had become belligerent with the staff.

"This statement is very inaccurate. I asked why I had to fill it out and I then was told okay then just sign it and leave the questions blank. I did not think that this was a good idea so I opted not to do this. I would also add that if I had indeed become belligerent I really do not think that the receptionist would have come back and stood as close as she did when she spoke to me, nor do I think that she would have tried to help me by making a call to see if I could be seen. Evidently this has not happened before or she would not have tried to resolve the situation because a solution would have been in place."

Appellant stated that she did not at any time refuse to attend a second opinion evaluation.

In a decision dated April 2, 2013, OWCP suspended appellant's compensation effective that date. It found that she did not cooperate. OWCP considered appellant's statement and found it an invalid reason for not cooperating. It advised that her benefits may be reinstated only after verification that she attended and fully cooperated with the examination, with such reinstatement effective the date of compliance.

In a decision dated July 31, 2013, an OWCP hearing representative performed a review of the written record and affirmed the April 2, 2013 decision suspending appellant's compensation. The hearing representative found that OWCP properly suspended her compensation on the grounds that she obstructed an OWCP-directed medical examination without good cause. Appellant appeared for the examination but refused to complete the short questionnaire Dr. Smith's office required because she felt he should have already known the answers. In evaluating the totality of the circumstances, the hearing representative found that the reasons appellant proffered failed to demonstrate good cause for her refusal to cooperate.

Appellant appealed the "termination" of her claim. "On the day of the second opinion evaluation, I was ill, had traveled a great distance in inclement weather. I was also apprehensive about being given another EMG [electromyogram] test. Perhaps I was perceived as being belligerent however that was not my intent." She added that at no time did she ever refuse to undergo a second opinion examination.

### **LEGAL PRECEDENT**

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 be reasonably required.<sup>2</sup> 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

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<sup>2</sup> 5 U.S.C. § 8123(a).

period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.<sup>3</sup>

### ANALYSIS

Dr. Smith, the second opinion orthopedic surgeon, advised OWCP that he terminated appellant's appointment because she failed to fill out or sign a short intake form. Appellant confirmed that she refused. Her reason for refusing was that the physician should have already known the answers to the questions. "I felt that the information requested on the form should have been sent to the doctor to read before I saw him."

The Board finds that appellant's refusal to follow standard intake procedures constituted obstruction of an OWCP-directed medical examination. Her disagreement with OWCP procedures or the physician's routine business practices, and her feeling that other procedures should have been followed, do not constitute good cause for her failure to cooperate. The Board will therefore affirm OWCP's October 22, 2013 decision suspending her compensation pursuant to 5 U.S.C. § 8123(d).

Appellant initially denied that she became belligerent with the physician's staff. She described the assertion as being very inaccurate. Nonetheless, appellant thought the referral was "asinine." In an apparent justification for her conduct, she explained that she was apprehensive because others had told her such evaluations were never favorable. Appellant did not think the Board-certified orthopedic surgeon would act in her best interest. She also explained that she was ill with a virus, had traveled a great distance in inclement weather, and was also apprehensive about being given another EMG. "Perhaps I was perceived as being belligerent," appellant concedes on appeal, but that was not her intent.

That appellant can understand why Dr. Smith's staff perceived her as being belligerent tends to support the description of her conduct, but it does not matter to the outcome of this case. For the purpose of invoking the penalty under 5 U.S.C. § 8123(d), it is sufficient that she refused to comply with standard intake procedures. Although appellant argues that at no time did she ever refuse to undergo the examination, she did refuse a step that was necessary for the successful completion of the examination.

The Board notes that OWCP did not terminate appellant's compensation. OWCP suspended any right to compensation pending her full cooperation and verified compliance. Following her full cooperation and verified compliance with the scheduled examination, the period of the obstruction, however long that may be, will be deducted from the period for which any compensation is payable.

### CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation pursuant to 5 U.S.C. § 8123(d) for obstructing an OWCP-directed medical examination.

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<sup>3</sup> *Id.* at § 8123(d).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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