

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

C.T., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Dallas, TX, Employer)

**Docket No. 14-1175
Issued: October 27, 2014**

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 April 21, 2014 appellant filed a timely appeal from an April 4, 2014 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.

ISSUES

The issues are: (1) whether OWCP properly found that an overpayment of \$22,984.00 was created from June 2, 2013 to January 11, 2014; and (2) whether OWCP properly denied waiver of the overpayment.

FACTUAL HISTORY

The case has previously been before the Board. By decision dated December 17, 2002, the Board affirmed a May 30, 2002 OWCP decision finding that appellant was not entitled to a

¹ 5 U.S.C. § 8101 *et seq.*

schedule award for her accepted psychiatric conditions.² In a decision dated October 2, 2006, the Board found that OWCP did not meet its burden of proof to terminate her compensation as of February 12, 2004.³ By decision dated April 6, 2012, the Board found that OWCP properly suspended appellant's compensation for failure to submit requested information regarding any employment activity.⁴

OWCP scheduled a second opinion examination by Dr. Tarakuma Reddy, a psychiatrist, on November 19, 2012. Appellant did not attend the scheduled examination. By decision dated May 17, 2013, OWCP suspended her compensation effective June 2, 2013 pursuant to 5 U.S.C. § 8123(d). The Board affirmed the May 17, 2013 decision based on the evidence of record. The history of the case as noted in the Board's prior decisions is incorporated herein by reference.

In a letter to OWCP dated May 20, 2013 and received by OWCP on May 31, 2013, appellant stated that she had received the May 17, 2013 decision. She stated that Dr. Reddy's office had advised her that rescheduling had to be done by the medical scheduler, and she included the address for the second opinion medical scheduler. In a CA-110 (memorandum of telephone call) dated July 5, 2013, OWCP indicated that appellant stated that she wanted to reschedule the second opinion examination. It advised her that a medical management assistant would be contacted to verify if rescheduling with Dr. Reddy was possible or if a new referral was needed. An e-mail correspondence from OWCP dated July 5, 2013 stated that appellant wanted to reschedule the second opinion examination.

On July 16, 2013 OWCP prepared a statement of accepted facts (SOAF) and a memorandum of referral for a second opinion examination. A CA-110 of the same date noted that the referral request should be disregarded, as the case was with the Board and the referral should await a decision.

By letter dated September 6, 2013, OWCP advised appellant to disregard the May 17, 2013 decision, as records indicated this decision was reversed. It issued a compensation payment on September 6, 2013 for the period June 2 to August 24, 2013. On January 30, 2014 appellant was advised that a second opinion examination with Dr. Reddy had been scheduled for February 18, 2014. The record indicates that she attended the scheduled examination.

In a letter dated February 20, 2014, OWCP advised appellant of a preliminary determination that an overpayment of \$22,984.00 was created from June 2, 2013 to January 11, 2014. It noted that the decision dated May 17, 2013 suspended her compensation, but OWCP erroneously placed her back on the periodic compensation rolls through January 11, 2014. According to OWCP, appellant was not at fault in the creation of the overpayment. She was advised to submit relevant evidence within 30 days.

² Docket No. 02-1971 (issued December 17, 2002). Appellant's claim was accepted by OWCP for anxiety, depression and post-traumatic stress disorder.

³ Docket No. 05-1805 (issued October 2, 2006).

⁴ Docket No. 11-2102 (issued April 6, 2012).

By decision dated April 16, 2014, OWCP finalized the \$22,984.00 overpayment of compensation. It denied waiver of the overpayment, finding that appellant did not submit relevant financial evidence. As to recovery, OWCP stated that appellant should send a payment for the full amount or that recovery would be made from future compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Under FECA at 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.” OWCP regulations state:

“Should the employee subsequently agree to attend the examination or cease obstruction (as expressed in writing or by telephone documented on Form CA-110), OWCP will restore any periodic benefits to which the employee is entitled when the employee actually reports for and cooperates with the examination. *Payment is retroactive to the date the employee agreed to attend or cease obstruction of the examination.*”⁵ (Emphasis added.)

ANALYSIS -- ISSUE 1

OWCP found that an overpayment of \$22,984.00 occurred from June 2, 2013 to January 11, 2014 because appellant received wage-loss compensation after her compensation had been suspended under 5 U.S.C. § 8123(d). To support fact of overpayment, OWCP cited to the May 17, 2013 decision, which was reviewed and affirmed by the Board. The May 17, 2013 decision does not establish an overpayment in this case.

The Board reviewed the evidence of record as of May 17, 2013 and found, based on that evidence, appellant had refused to submit or obstructed a medical examination. The overpayment issue in this case is whether the subsequent evidence of record establishes that appellant was entitled to restored benefits from June 2, 2013 to January 11, 2014. As OWCP regulations clearly state, when appellant attended the second opinion examination on February 18, 2014, payment is retroactive to “the date the employee agreed to attend or cease obstruction of the examination.”

The evidence of record reflects that appellant agreed to attend a rescheduled examination as early as her May 20, 2013 letter, received by OWCP on May 31, 2013. Appellant stated in her letter that she had contacted the second opinion physician’s office and the appointment had to be rescheduled by OWCP’s medical scheduler. On July 5, 2013 a CA-110 again confirmed that appellant wanted the second opinion examination rescheduled. OWCP indicated on July 16, 2013 that the examination would be rescheduled, but determined that rescheduling should wait until the Board issued a decision with respect to the May 17, 2013 OWCP decision.

The second opinion examination was rescheduled for February 18, 2014 and appellant attended the examination. At that point she was entitled to restoration of compensation

⁵ 20 C.F.R. § 10.323. See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(e) (June 2014).

retroactive to the date she “agreed to attend” the examination. The evidence of record establishes that this date occurred before June 2, 2013. There is no evidence to support the finding that an overpayment of compensation occurred from June 2, 2013 to January 11, 2014 due to a suspension of compensation. The Board will reverse the fact of overpayment. The remaining issue of waiver is moot.

CONCLUSION

The Board finds that the evidence does not establish an overpayment of compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated April 4, 2014 is reversed.

Issued: October 27, 2014
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