

FACTUAL HISTORY

On May 9, 2011 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2011 she sustained heatstroke while in the performance of her federal employment duties. By decision dated June 28, 2011, OWCP accepted the claim for heatstroke.³ Appellant stopped work and received medical and wage-loss compensation benefits and was placed on the periodic rolls.

By letter dated December 16, 2013, OWCP notified appellant and counsel that a referee examination was needed in order to address the conflict in medical evidence between her attending physician and the second opinion physician as to whether and under what conditions she could return to work. Appellant was notified that an appointment had been scheduled for January 24, 2014 at 3:15 p.m. with Dr. Gabriel Habib, Board-certified in internal medicine. She was further advised that, if she refused to attend or obstructed the examination, her compensation could be suspended under 5 U.S.C. § 8123(d).⁴

In another letter dated January 29, 2014, OWCP notified appellant and counsel that the appointment had been rescheduled for February 7, 2014 at 3:20 p.m. with Dr. Habib. Appellant was again advised that, if she refused to attend or obstructed the examination, her compensation could be suspended under 5 U.S.C. § 8123(d).

In a February 7, 2014 e-mail correspondence, Dr. Habib's office informed OWCP that appellant had not attended her scheduled appointment. His office called to ask her if she was attending the appointment and appellant advised that she was off work, but would not be coming in as she had other things to do.

On February 10, 2014 OWCP proposed to suspend appellant's compensation benefits pursuant to section 8123(d) of FECA for failure to attend the February 7, 2014 examination with Dr. Habib. Appellant was advised to provide a written explanation of her reasons, with substantive corroborating evidence, within 14 days for failing to attend the scheduled examination.

By letter dated February 18, 2014, received on February 24, 2014, appellant reported that her initial January 24, 2014 visit with Dr. Habib had to be rescheduled because she was ill with bronchitis. The appointment was rescheduled for February 7, 2014, the week of inspections

³ The Board notes that on April 16, 2014 OWCP proposed to rescind acceptance of appellant's claim for heatstroke as a result of the May 7, 2011 employment injury. It found that the weight of the medical evidence rested with Dr. Habib, serving as the referee physician. By decision dated May 20, 2014, OWCP finalized its proposed rescission and rescinded the acceptance of appellant's claim for heatstroke causally related to the May 7, 2011 employment injury. Appellant, through counsel, requested a hearing before the Branch of Hearings and Review regarding the May 20, 2014 decision on May 27, 2014. In a letter to the Branch of Hearings and Review dated May 20, 2015 appellant's counsel noted that his May 27, 2014 hearing request had been acknowledged, but that no hearing date had yet been set. The May 20, 2014 decision is not before the Board on appeal and the issue of rescission of acceptance of the claim is currently in an interlocutory posture. The Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case). 20 C.F.R. § 501.2(c)(3).

⁴ The Board notes that appellant requested the January 24, 2014 appointment be rescheduled due to illness.

scheduled for all postal routes by employing establishment. Appellant reported that the employing establishment informed all city carriers not to miss any workdays due to the importance of inspection coverage for each route. Moreover, she stated that she did not have enough notice to reschedule her walking route inspection. Appellant apologized stating that she would attend the next scheduled appointment.

By decision dated February 25, 2014, OWCP finalized its proposed suspension, effective that same date.

On March 5, 2014 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In a March 7, 2014 letter, counsel argued that appellant wrote a letter explaining why she missed her examination and agreed to attend the rescheduled examination. He requested that OWCP acknowledge her letter and advise them of a new examination date.

By letter dated March 13, 2014, OWCP notified appellant and counsel that a referee examination had been rescheduled for March 28, 2014 at 3:30 p.m. with Dr. Habib. Appellant was again advised that, if she refused to attend or obstructed the examination, her compensation could be suspended under 5 U.S.C. § 8123(d).

On March 28, 2014 Dr. Habib submitted a referee report documenting appellant's attendance at the examination.

By letter dated May 9, 2014, counsel argued that appellant's compensation benefits were suspended effective February 25, 2014, but she had since attended the examination. He requested that OWCP vacate the order and overturn the prior decision so that she could proceed forth with other issues.

By letter dated May 14, 2014, OWCP informed appellant and counsel that her benefits had been reinstated following her attendance at examination.

At the September 9, 2014 hearing, counsel noted that appellant attended the rescheduled March 28, 2014 examination with Dr. Habib, that the issue was moot, and that the prior February 25, 2014 decision no longer had bearing.

By decision dated February 20, 2015, the hearing representative affirmed the February 25, 2014 decision finding that appellant failed to attend an OWCP-directed examination and failed to provide an adequate reason for failure to do so, meriting suspension of her benefits.

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.⁵

⁵ 5 U.S.C. § 8123.

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.⁶ 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.⁷ 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.⁸ 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.⁹ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.¹⁰

ANALYSIS

OWCP scheduled a referee examination on February 7, 2014 with Dr. Habib. Appellant did not appear for the scheduled examination. By decision dated February 25, 2014, OWCP suspended her compensation benefits based on her failure to appear. On February 20, 2015 OWCP hearing representative affirmed the February 25, 2014 decision. The Board finds that OWCP properly suspended appellant's compensation for failure to attend a medical examination.

The only limitation on OWCP's authority, with regard to instructing a claimant to undergo a medical examination, is that of reasonableness.¹¹ 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.¹²

On January 29, 2014 OWCP advised appellant and her representative of the appointment and that, if she did not keep the appointment, her benefits could be suspended. Appellant did not attend the scheduled February 7, 2014 appointment.

After the February 10, 2014 proposed suspension of benefits, appellant was provided 14 days to provide reasons for failing to attend the scheduled examination.¹³

⁶ *J.T.*, 59 ECAB 293 (2008); *S.B.*, 58 ECAB 267 (2007); *James C. Talbert*, 42 ECAB 974 (1991).

⁷ 20 C.F.R. § 10.320.

⁸ 5 U.S.C. § 8123; 20 C.F.R. § 10.323; *Dana D. Hudson*, 57 ECAB 298 (2006).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

¹⁰ *Id.*

¹¹ *Lynn C. Huber*, 54 ECAB 281 (2002).

¹² *M.B.*, Docket No. 10-1755 (issued March 24, 2011).

¹³ 5 U.S.C. § 8123; *S.B.*, 58 ECAB 267 (2007).

Appellant reported that she could not attend the scheduled February 7, 2014 appointment because she was required to work due to inspections scheduled for all postal routes, and that she had not received the appointment notification in time to take off work. The Board notes that Dr. Habib's office confirmed that she was off work that day and there is no evidence supporting her allegations that work prevented her attendance at the examination, nor did appellant submit any other evidence to justify her failure to attend the examination.¹⁴ As appellant did not provide good cause for failing to appear at the February 7, 2014 scheduled examination, the Board finds that OWCP properly suspended her right to compensation benefits effective February 25, 2014.¹⁵

Thus, the Board finds that OWCP properly suspended entitlement to compensation in accordance with 5 U.S.C. § 8123.¹⁶

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits effective February 25, 2014 for failure to attend a medical examination.

¹⁴ *D.K.*, Docket No. 14-933 (issued April 15, 2015).

¹⁵ *L.B.*, Docket No. 14-2005 (issued January 28, 2015).

¹⁶ When the claimant actually reports for examination, payment retroactive to the date on which the claimant agreed to attend the examination on February 24, 2014 may be made. *Supra* note 9 at *Developing and Evaluating Medical Evidence, Suspension of Benefits*, Chapter 2.810.13(e) (September 2010).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board