

finger when another employee lifted a shelf while she was pulling on the side of a general purpose mail container (GPMC), causing her finger to break. She did not stop work.²

OWCP accepted the claim for closed fracture of the right digit of the distal phalanx. Appellant was released to work without restrictions on March 4, 2010.

On June 12, 2015 appellant filed a claim for a schedule award (Form CA-7).

Appellant was referred by OWCP to Dr. Brent Sprinkle, an osteopathic physician, for a second opinion evaluation to determine whether appellant had a permanent impairment of her right upper extremity causally related to her accepted employment injuries. On August 24, 2015 Dr. Sprinkle reported that appellant's diagnosis was closed fracture of the distal phalanges of the right hand. He provided examination findings and concluded that she had one percent permanent impairment of the right hand pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³ In a report dated January 28, 2016, Dr. Sprinkle noted diagnoses of right carpal tunnel syndrome and lesion of the right ulnar nerve. He concluded that appellant had 10 percent permanent impairment of the right upper extremity pursuant to the A.M.A., *Guides*.

In a report dated February 8, 2016, an OWCP medical adviser reviewed the record and found that, based upon Dr. Sprinkle's examination findings appellant had three percent permanent impairment of the right little finger pursuant to the A.M.A., *Guides*. In a second report dated February 26, 2016, the district medical adviser noted that Dr. Sprinkle had found that appellant had 10 percent permanent impairment of the right upper extremity due to ulnar and median nerve entrapment. He also related that a review of appellant's medical records revealed that appellant's physician Dr. Rooney had reported on March 7, 2007 that appellant had full sensation in the right upper extremity, following surgery, which conflicted with Dr. Sprinkle's findings of decreased sensation in the ulnar nerve distribution. The district medical adviser concluded that his review of appellant's medical records revealed a significant conflict between Dr. Rooney and Dr. Sprinkle as to appellant's neurological examination that could not be resolved on the basis of a medical records review.

By letter dated March 16, 2016, OWCP notified appellant that an impartial medical examination was needed in order to address the conflict in medical evidence between her attending physician and the second opinion physician regarding her permanent impairment rating and date of maximum medical improvement. It advised that an appointment had been scheduled for April 1, 2016 at 1:00 p.m. with Dr. Kenneth Rosenzweig, a Board-certified orthopedic surgeon, for an impartial medical examination. Appellant was further advised that, if she refused or obstructed the examination, her compensation could be suspended under 5 U.S.C. § 8123(d).

² The Board notes that appellant also has a September 19, 2006 occupational disease claim which was accepted for right carpal tunnel syndrome and right ulnar nerve lesion. Appellant was released to work without restrictions on May 23, 2007. (OWCP File No. xxxxxx735). Appellant's treating physician, Dr. Thomas P. Rooney, Board-certified in orthopedic surgery, reported on September 17, 2009 that appellant had no symptoms regarding her right carpal tunnel condition. He also noted that her scar was well healed, that she had full function, no sensory deficit, no atrophy and no permanent impairment.

³ A.M.A., *Guides* (6th ed. 2009).

An April 5, 2016 e-mail correspondence, reflects that OWCP was notified by the impartial medical examiner that appellant did not appear for her April 1, 2016 examination.

On April 6, 2016 OWCP proposed to suspend appellant's compensation benefits pursuant to section 8123(d) of FECA for failure to attend the April 1, 2016 examination with Dr. Rosenzweig. Appellant was advised that she should provide a written explanation of her reasons, with substantive corroborating evidence, within 14 days for failing to attend the scheduled examination. She did not respond.

By decision dated April 22, 2016, OWCP finalized its proposed suspension effective that same date. It noted that it directed appellant on March 16, 2016 to report for the examination scheduled on April 1, 2016 but she did not attend the examination or show good cause for her failure to attend the examination as she failed to respond to the proposed suspension.

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.⁴ 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.⁵ 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.⁶ 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.⁷ 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.⁸ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.⁹

ANALYSIS

OWCP scheduled an impartial medical examination on April 1, 2016 with Dr. Rosenzweig. Appellant did not appear for the scheduled examination. By decision dated April 22, 2016, OWCP suspended her compensation benefits based on her failure to appear. The

⁴ 5 U.S.C. § 8123.

⁵ *J.T.*, 59 ECAB 293 (2008); *S.B.*, 58 ECAB 267 (2007); *James C. Talbert*, 42 ECAB 974 (1991).

⁶ 20 C.F.R. § 10.320.

⁷ *Supra* note 4; 20 C.F.R. § 10.323; *Dana D. Hudson*, 57 ECAB 298 (2006).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010).

⁹ *Id.*

Board finds that OWCP properly suspended appellant's compensation for failure to attend a medical examination on April 1, 2016.

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 regard to instructing a claimant to undergo a medical examination, is that of reasonableness.¹⁰ 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.¹¹

On March 16, 2016 OWCP advised appellant that it would refer her for an impartial medical examination and that, if she did not keep the appointment, her benefits could be suspended. Appellant was referred for an impartial medical evaluation with Dr. Rosenzweig and was advised of the need for the examination and the time and place for the scheduled appointment. She did not attend the scheduled April 1, 2016 appointment. OWCP subsequently allowed appellant 14 days to provide reasons for failing to appear. Again, appellant did not respond. As she did not respond to the proposed suspension, appellant has not established good cause for refusing to undergo the April 1, 2016 examination.¹² OWCP properly suspended her right to future compensation benefits effective April 22, 2016 pursuant to section 8123 of FECA.¹³

Thus, the Board finds that OWCP properly suspended entitlement to compensation in accordance with 5 U.S.C. § 8123(d) until the date on which appellant agrees to attend the examination. When appellant actually reports for examination, payment retroactive to the date on which she agreed to attend the examination may be made.¹⁴

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits effective April 22, 2016 for failure to attend a medical examination.

¹⁰ *Lynn C. Huber*, 54 ECAB 281 (2002).

¹¹ *M.B.*, Docket No. 10-1755 (issued March 24, 2011).

¹² *L.B.*, Docket No. 14-2005 (issued January 28, 2015).

¹³ *Supra* note 4; *S.B.*, 58 ECAB 267 (2007).

¹⁴ *C.S.*, Docket No. 11-1366 (issued December 12, 2011); *E.B.*, 59 ECAB 298 (2008). When the claimant actually reports for examination, payment retroactive to the date on which the claimant agreed to attend the examination may be made. *Supra* note 8 at Chapter 2.810.13(e) (September 2010).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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