

FACTUAL HISTORY

On January 10, 2008 appellant, then a 55-year-old medical instrument technician, filed a traumatic injury claim (Form CA-1) alleging that, on January 9, 2008, she sustained head, neck, arm, and hand injuries while reaching for an endoscope case in the performance of her duties, which fell and hit her head. She stopped work on January 11, 2008. OWCP initially accepted the claim for mild head contusion. It subsequently expanded acceptance of the claim to include aggravation of degenerative cervical disc disease, left partial rotator cuff tear, aggravation of degenerative arthritis of the cervical spine, and neck and shoulder myofascial pain. Appellant received compensation for temporary total disability from OWCP on the supplemental roll commencing March 2, 2008. On November 3, 2008 she returned to limited-duty work, four hours a day, three days a week. On July 3, 2012 appellant retired from the employing establishment.

By decision dated December 5, 2012, OWCP denied appellant's schedule award claim (Form CA-7). It noted that she had not responded to its September 17, 2012 development letter, which requested that she submit a medical report from her physician assessing her permanent impairment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*² and establishing the date on which she reached maximum medical improvement (MMI).

By letters dated September 8 and 9, 2015, OWCP referred appellant to Dr. Christopher B. Geary, a Board-certified orthopedic surgeon, in Boston, Massachusetts, for a second opinion evaluation to determine the nature of her condition, extent of her disability, and appropriate medical treatment. It advised that an appointment had been scheduled for October 1, 2015 at 8:00 a.m. Appellant was further advised that, if she refused or obstructed the examination, her compensation could be suspended under 5 U.S.C. § 8123(d).

On September 29, 2015 appellant informed OWCP that she was unable to attend the October 1, 2015 appointment because she was in Florida. By letter dated September 29, 2015, OWCP notified her that an appointment with Dr. Geary was rescheduled for October 15, 2015 at 2:00 p.m.

An October 15, 2015 letter reflects that OWCP was notified by QTC Medical Services, OWCP's scheduling contractor, that appellant did not appear for her October 15, 2015 examination.

In an October 23, 2015 notice, OWCP proposed to suspend appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d) as she failed to attend the examination scheduled for October 15, 2015 with Dr. Geary. 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.

During a telephone conversation on November 4, 2015 and by letter of the same date, appellant advised OWCP that she no longer lived in Massachusetts. She claimed that being subjected to further evaluation was a form of harassment by OWCP. Appellant noted that OWCP

² A.M.A., *Guides* (6th ed. 2009).

had sent her to an evaluation performed on December 7, 2010 by Dr. St. George Tucker Aufranc, a Board-certified orthopedic surgeon and an impartial medical specialist, who agreed that her restrictions were permanent and that she had reached MMI.³ In a letter dated November 5, 2015, she advised OWCP of her new permanent address in Florida.

By decision dated December 8, 2015, OWCP finalized its proposed suspension, effective November 15, 2015. It noted that it directed appellant on September 29, 2015 to report for the examination scheduled on October 15, 2015, but she did not attend the examination or show good cause for her failure to attend the examination as she failed to indicate her intent to reschedule the appointment in her November 4, 2015 response letter.

By appeal request form and letter dated December 13, 2013 and received by OWCP on December 13, 2015, appellant requested a review of the written record by an OWCP hearing representative. She noted that when she was contacted by QTC Medical Services on October 14, 2015 about her October 15, 2015 appointment with Dr. Geary that was the first communication she had received about the scheduled appointment. Appellant advised QTC's Medical Services representative that she lived in Florida and that she could not be in Massachusetts on the next day. She indicated that the representative notified OWCP that she would not be able to attend the appointment with Dr. Geary. Appellant further indicated that on October 14, 2015 she informed OWCP that she lived in Florida and that she could not get a flight out in time for the appointment. She maintained that she had notified OWCP of her change of address. OWCP informed her that her records would be transferred to a Florida district office. Appellant related that she thought she would be hearing from the Florida district office, but instead she received OWCP's December 8, 2015 suspension decision. She requested that the decision be overturned as her address change was never documented in her records by OWCP after three failed attempts to do so.

By decision dated April 26, 2016, an OWCP hearing representative reversed the December 8, 2015 decision and directed that appellant's wage-loss compensation be reinstated retroactive to November 15, 2015. She found that OWCP did not consider the fact that appellant resided in Florida at the time it scheduled her for a second opinion examination in Massachusetts, which was a reasonable and acceptable explanation for her failure to appear.

By letters dated November 14 and December 14, 2016, OWCP referred appellant to Dr. Fuchs in Fort Meyers, Florida for a second opinion evaluation. It advised that an appointment had been scheduled for January 10, 2017 at 10:30 a.m. OWCP further advised that, if appellant refused or obstructed the examination, her compensation could be suspended under 5 U.S.C. § 8123(d).

On December 20, 2016 appellant informed OWCP that she had not received any compensation benefits in accordance with OWCP's hearing representative's April 26, 2016 decision.

³ The Board notes that Dr. Aufranc was selected by OWCP as an impartial medical specialist to resolve a conflict in medical opinion evidence between Dr. Joseph F. Audette, an attending Board-certified physiatrist, and Dr. Joel A. Saperstein, a Board-certified orthopedic surgeon and an OWCP referral physician, regarding appellant's work capacity.

In a letter dated January 11, 2017, QTC Medical Services informed OWCP that appellant did not attend the January 10, 2017 appointment with Dr. Fuchs in Fort Meyers, Florida.

In a notice dated February 6, 2017, OWCP proposed to suspend appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d) for failure to attend the January 10, 2017 examination with Dr. Fuchs. 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 within the allotted time.

By decision dated February 27, 2017, OWCP finalized its proposed suspension, effective that same date. It noted that it had directed appellant on December 14, 2016 to report for the examination scheduled on January 10, 2017, 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 notice.

In a February 20, 2017 letter received by OWCP on February 28, 2017, appellant responded to the February 6, 2017 proposed suspension notice. She reiterated her prior contentions.

In an appeal request form and letter dated March 22, 2017 and received by OWCP on March 30, 2017, appellant requested a review of the written record by an OWCP hearing representative regarding the February 27, 2017 decision. She restated her prior arguments.

By decision dated July 6, 2017, a second OWCP hearing representative affirmed the February 27, 2017 decision, finding that appellant failed to attend an OWCP-directed examination and failed to provide an adequate reason for failure to do so.

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 at section 10.320 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 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.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

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

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

The Board finds that OWCP properly suspended appellant's compensation, pursuant to 5 U.S.C. § 8123(d), for failure to attend a medical examination.

OWCP scheduled a second opinion evaluation on January 10, 2017 with Dr. Fuchs in Fort Meyers, Florida. Appellant did not appear for the scheduled examination. By decision dated February 27, 2017, OWCP suspended her compensation benefits based on her failure to appear. On July 6, 2017 an OWCP hearing representative affirmed the February 27, 2017 decision.

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 December 14, 2016 OWCP advised appellant that it would refer her for a second opinion examination and that, if she did not keep the appointment, her benefits could be suspended. Appellant was referred for a second opinion evaluation with Dr. Fuchs and was advised of the need for the examination and the time and place for the scheduled appointment. She did not attend the scheduled January 10, 2017 appointment.

OWCP subsequently allowed appellant 14 days to provide reasons for failing to appear.¹² In response and on appeal, appellant contended that a medical examination should not have been scheduled because OWCP never reinstated her workers' compensation benefits retroactive to November 15, 2015 as directed by OWCP's hearing representative's April 26, 2016 decision, which reversed OWCP's December 8, 2015 OWCP decision suspending her compensation benefits for failure to attend an October 15, 2015 medical examination. The fact that OWCP did not reinstate appellant's compensation benefits in compliance with the April 26, 2016 decision is

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

⁹ *Id.*

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

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

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

not a sufficient reason for her failure to attend the January 10, 2017 medical examination.¹³ Appellant has not otherwise explained why she did not attend the scheduled examination.

As appellant did not attend the January 10, 2017 scheduled examination and failed to provide good cause for failing to appear within 14 days of OWCP's February 6, 2017 notice of proposed suspension, the Board finds that OWCP properly suspended entitlement to future compensation in accordance with 5 U.S.C. § 8123(d) until the date on which she agrees to attend the examination.¹⁴ When appellant actually reports for examination, payment retroactive to the date on which she agreed to attend the examination may be made.¹⁵

On appeal appellant contends that she has not received workers' compensation benefits since November 15, 2015 despite an OWCP hearing representative's April 26, 2016 decision, which reversed a prior December 8, 2015 OWCP suspension decision and reinstated her compensation benefits as of November 15, 2015. She notes that, after being notified about a medical examination with Dr. Fuchs and an OWCP referral physician, she unsuccessfully tried to contact OWCP to request that they reinstate her compensation benefits. Appellant relates that the next correspondence she received was a February 27, 2017 OWCP decision, which suspended her wage-loss compensation and medical benefits. As explained above, the Board finds that OWCP properly suspended entitlement to future compensation in accordance with 5 U.S.C. § 8123(d) until the date on which she agrees to attend the examination.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d), effective February 27, 2017, due to her failure to attend a scheduled medical examination.

¹³ The Board notes that appellant was receiving Social Security Administration retirement benefits and OWCP did not send her an election of benefits form to indicate whether she wanted to continue receiving these benefits or to receive FECA benefits.

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

¹⁵ *Id.*; *C.S.*, Docket No. 11-1366 (issued December 12, 2011); *E.B.*, 59 ECAB 298 (2008).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 2018
Washington, DC

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

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

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