

FACTUAL HISTORY

On April 18, 2013 appellant, then a 29-year-old cemetery caretaker, filed a traumatic injury claim (Form CA-1) for low back pain. He alleged that on April 16, 2013 he felt pain in his lower back when lifting 100- to 200-pound rolls of sod while in the performance of duty.² Appellant was terminated from the employing establishment, effective September 25, 2013, when his temporary appointment expired. On May 12, 2014 he underwent an L4-5 discectomy.

OWCP accepted the claim for permanent aggravation of a displaced L4-5 disc. It paid appellant wage-loss compensation for the period August 1, 2013 to May 2, 2015. OWCP placed appellant's case on the periodic rolls, effective April 5, 2015. Appellant did not return to work.

By letter dated May 10, 2016, OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions to Dr. Kirpal Sidhu, a Board-certified orthopedic surgeon, for a second opinion evaluation. It advised that an appointment had been scheduled for May 24, 2016 at 3:00 p.m. with Dr. Sidhu at his specified office address. Appellant was further advised that, if he refused or obstructed the examination, his compensation could be suspended under 5 U.S.C. § 8123(d).

In a May 19, 2016 telephone memorandum (Form CA-110), OWCP noted that appellant contended that he was unable to attend the scheduled appointment as he had a 30-minute travel restriction, but Dr. Sidhu's office was a two-and-a-half-hour drive from his residence. It notified appellant that there was no current medical report of record that would corroborate a travel restriction. At appellant's request, OWCP sent him a list of questions for his physician.

In a letter dated May 24, 2016, the medical management contractor notified OWCP that appellant had not attended the scheduled medical appointment with Dr. Sidhu.

On June 9, 2016 OWCP proposed to suspend appellant's compensation benefits pursuant to section 8123(d) of FECA for failure to attend the May 24, 2016 appointment with Dr. Sidhu. Appellant was advised that he should provide a written explanation of his reasons, with substantive corroborating evidence, within 14 days for failing to attend the scheduled examination.

In response, appellant submitted a June 15, 2016 letter in which he asserted that the appointment with Dr. Sidhu had been cancelled prior to May 24, 2016. He added that he had requested his physician to send in an updated medical report.

By decision dated July 5, 2016, OWCP finalized its proposed suspension, effective that same date. It noted that it had directed appellant on May 10, 2016 to report for the examination

² OWCP initially denied the claim by decision dated June 13, 2013, based on a lack of medical evidence to establish causal relationship. Following an oral hearing before an OWCP hearing representative held on June 11, 2014, it issued an August 22, 2014 decision which vacated the June 13, 2013 decision and remanded the claim to OWCP for a second-opinion referral. On remand of the case OWCP obtained a November 20, 2014 second opinion report by Dr. Nicholas A. Grimaldi, a Board-certified orthopedic surgeon, who opined that the accepted April 16, 2013 employment incident permanently aggravated a displaced L4-5 disc. By decision dated January 30, 2015, OWCP accepted that the April 16, 2013 employment incident caused permanent aggravation of a displaced L4-5 disc.

scheduled for May 24, 2016, but he did not attend. OWCP found that there was insufficient evidence to support that he could not attend the May 24, 2016 appointment with Dr. Sidhu.

In a letter dated August 11, 2016 and received by OWCP on August 16, 2016, appellant requested reconsideration. He expressed his willingness to attend a second-opinion appointment, and requested that OWCP reinstate his wage-loss compensation. Appellant also telephoned OWCP on August 23, 2016 to request that his second-opinion appointment be rescheduled.

In a letter dated August 25, 2016, OWCP referred appellant, a SOAF and the medical record to Dr. Nicholas A. Grimaldi, a Board-certified orthopedic surgeon, for a second-opinion examination on September 22, 2016. Appellant attended the appointment.

By letter decision dated September 27, 2016, OWCP vacated its July 5, 2016 decision, which suspended appellant's compensation benefits, and reinstated appellant's compensation benefits, commencing August 11, 2016, as he indicated in his August 11, 2016 letter that he would attend a rescheduled second-opinion appointment.

In a letter dated October 5, 2016 and received by OWCP on October 12, 2016, appellant requested reconsideration of OWCP's September 27, 2016 decision. He requested that OWCP reinstate his monetary compensation benefits for the period July 5 to August 10, 2016.

By decision dated July 20, 2017, OWCP denied reinstatement of appellant's compensation benefits for the period July 5 to August 10, 2016 as appellant did not indicate he would attend the scheduled second-opinion appointment until August 11, 2016. It explained that the period of refusal was deducted from the period in which compensation benefits were payable.

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.³ 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.⁴ 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.⁵ 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.⁶ OWCP procedures provide that, before OWCP may invoke these provisions, the employee is to be provided a period of 14 days within which to present in writing his or her reasons

³ 5 U.S.C. § 8123.

⁴ *J.T.*, 59 ECAB 293 (2008); *S.B.*, 58 ECAB 267 (2007); *James C. Talbert*, 42 ECAB 974 (1991).

⁵ 20 C.F.R. § 10.320.

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

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

ANALYSIS

The Board finds that OWCP properly suspended appellant's compensation for failure to attend a medical examination on May 24, 2016.

OWCP scheduled a second-opinion medical examination on May 24, 2016 with Dr. Sidhu. Appellant did not appear for the scheduled examination. By decision dated July 5, 2016, OWCP suspended his compensation benefits due to his failure to appear. 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.⁹ 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.¹⁰

On May 10, 2016 OWCP advised appellant its intention to refer him for a second-opinion medical examination and that, if he did not attend the appointment, his benefits could be suspended. Appellant was referred for a second-opinion medical evaluation with Dr. Sidhu and was advised of the need for the examination and the time and place for the scheduled appointment. He did not attend the scheduled May 24, 2016 appointment.

OWCP subsequently allowed appellant 14 days to provide reasons for failing to appear. Appellant submitted a June 15, 2016 letter asserting that his physician had restricted him from traveling for more than 30 minutes, and Dr. Sidhu's office was a two-and-a-half-hour drive. However, he did not provide evidence to corroborate his allegations. Therefore, appellant has not established good cause for refusing to undergo the May 24, 2016 examination.¹¹ Without evidence in support of his allegation, OWCP has nothing more than an unsubstantiated excuse.¹² 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 this authority is that of reasonableness.¹³ There is no evidence in the record that OWCP abused its discretion in directing the examination.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010).

⁸ *Id.* See also *L.M.*, Docket No. 17-2025 (issued March 22, 2018).

⁹ *Lynn C. Huber*, 54 ECAB 281 (2002).

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

¹¹ *L.M.*, *supra* note 8; *L.B.*, Docket No. 14-2005 (issued January 28, 2015).

¹² *Atanacio G. Sambrano*, 51 ECAB 557 (2000).

¹³ *Supra* note 9.

In a letter dated August 11, 2016, appellant indicated his willingness to attend a rescheduled second-opinion appointment. By decision dated September 27, 2016, OWCP reinstated appellant's compensation benefits retroactive to August 11, 2016 as his refusal to attend the scheduled second-opinion appointment ended on that date.¹⁴ However, as appellant remained in refusal from July 5 to August 10, 2016, he was not entitled to compensation benefits for that period. Thus, the Board finds that OWCP properly suspended his compensation benefits for the period July 5 to August 10, 2016 pursuant to section 8123(d) of FECA.¹⁵

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits for the period July 5 to August 10, 2016 pursuant to 5 U.S.C. § 8123(d) due to his failure to attend a scheduled medical examination.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 20, 2017 is affirmed.

Issued: May 22, 2018
Washington, DC

Christopher J. Godfrey, 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

¹⁴ As the Board has held, when appellant actually reports for examination, payment retroactive to the date on which he or she agreed to attend the examination may be made. See *L.M.*, *supra* note 8; *E.B.*, 59 ECAB 298 (2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010).

¹⁵ 20 C.F.R. § 10.320; *S.B.*, 58 ECAB 267 (2007).