

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

G.E., Appellant	)	
	)	
and	)	<b>Docket No. 19-1949</b>
	)	<b>Issued: October 26, 2020</b>
U.S. POSTAL SERVICE, FREDERICK POST	)	
OFFICE, Frederick, MD, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 23, 2019 appellant filed a timely appeal from a September 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 11, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d), effective September 15, 2019, due to her failure to attend a scheduled medical appointment.

## FACTUAL HISTORY

On November 16, 2005 appellant, then a 35-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 12, 2005 she tore ligaments in her right hand as a result of attempting to catch a falling box while in the performance of duty. OWCP initially accepted the claim for right wrist sprain. It later expanded the acceptance of the claim to include the additional conditions of triangular fibrocartilage complex tear of the wrist, right carpal tunnel syndrome, and articular cartilage disorder of the right hand, lateral epicondylitis, and other joint derangement of the right forearm. OWCP later authorized an arthroscopy of the right wrist, a right carpal tunnel release, a partial removal of the ulna, and an A1 pulley release of the right thumb and incise finger tendon sheath, and paid her wage-loss compensation on the periodic rolls, commencing December 24, 2006.

On March 15, 2019 OWCP referred appellant to Dr. Easton Manderson, a Board-certified orthopedic surgeon, for a second opinion examination. In his April 9, 2019 report, Dr. Manderson found that appellant had had right wrist surgery for triangular cartilage tear, stabilization of the radioulnar joint with a tendon graft for right wrist sprain, and an ulnar nerve transposition for cubital tunnel syndrome, which would have explained the marked weakness of her right grip, finding her surgery had failed. He noted his disagreement with an attending physician that there were any preexisting conditions of appellant's right upper extremity and opined that any conditions at present were related to the accepted November 12, 2005 employment injury. Dr. Manderson opined that the fracture of the forearm bones of the right forearm had occurred after the surgery of the right wrist and after the injury and, therefore, were sequela of the November 12, 2005 ulnar nerve injury. However, he recommended repeat electrodiagnostic studies to determine whether appellant's marked right grip weakness and positive Tinel's sign of the right elbow were also causally related to the accepted employment injury.

In two separate letters dated April 12, 2019, OWCP referred appellant for an electromyography (EMG) scheduled for June 10, 2019 and an x-ray scheduled for June 14, 2019.<sup>3</sup>

Appellant failed to attend the EMG testing on June 10, 2019. She also failed to attend the x-ray on June 14, 2019.

In a June 13, 2019 notice, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), as she had failed to attend the EMG scheduled for June 10, 2019. It advised her that she should provide a written explanation of her reasons for failing to attend the scheduled examination, with substantive corroborating evidence,

---

<sup>3</sup> OWCP had previously attempted to schedule the prescribed diagnostic tests and sent letters of notice to appellant on April 12, 2019, after which the medical clinic noted that it had been unable to reach appellant by telephone regarding the scheduled appointment.

within 14 days. A copy of the proposed notice was also mailed to appellant's then-counsel. No response was received.

OWCP subsequently contacted Dr. Manderson and requested a supplemental report as to whether and why the diagnostic studies were necessary.

In an August 12, 2019 supplemental report, Dr. Manderson clarified his opinion that an x-ray of appellant's right wrist was necessary to make sure that there were no bony spurs or bony disorder that were contributing to the ulnar nerve problems at the right elbow. He explained that radiographs of the right wrist and elbow and electrodiagnostic studies of the right ulnar nerve would help to establish the present status of the right upper extremity and would help to make his recommendation for treatment more precise.

In a Form EN1032 dated August 29, 2019, appellant noted that her address had changed as of August 1, 2019.<sup>4</sup>

By decision dated September 11, 2019, OWCP finalized its proposed suspension of appellant's wage-loss compensation and medical benefits, effective September 15, 2019, finding that on June 6, 2019 it had directed appellant to attend an EMG scheduled for June 10, 2019, but she had not attended the appointment, nor had she provided a reason why she had refused to attend the diagnostic study.

### **LEGAL PRECEDENT**

Section 8123(d) 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.<sup>5</sup> 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.<sup>6</sup> OWCP's 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.<sup>7</sup> 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.<sup>8</sup> OWCP's 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 for the refusal or obstruction.<sup>9</sup> If good cause for the refusal or obstruction is not

---

<sup>4</sup> In a memorandum dated September 18, 2019, OWCP noted that appellant had not indicated her change of address until after the June 10, 2019 EMG had already been scheduled.

<sup>5</sup> 5 U.S.C. § 8123(d).

<sup>6</sup> *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

<sup>7</sup> 20 C.F.R. § 10.320.

<sup>8</sup> *Id.* at § 10.323; *L.B.*, *supra* note 6.

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010).

established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.<sup>10</sup>

### ANALYSIS

The Board finds that OWCP properly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d), effective September 15, 2019, due to her failure to attend a scheduled medical appointment.

In his April 9, 2019 second opinion report, Dr. Manderson opined that repeat diagnostic studies were medically necessary to determine the etiology of appellant's right elbow conditions.

OWCP subsequently referred appellant, by letter dated June 6, 2019, for a June 10, 2019 EMG. It informed her of the time and place of the diagnostic testing and explained that it would suspend her compensation pursuant to 5 U.S.C. § 8123(d) if she refused to submit to or obstructed testing. Appellant, however, failed to appear for the June 10, 2019 scheduled testing.

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.<sup>11</sup> The only limitation on OWCP's authority, with regard to instructing a claimant to undergo a medical examination, is that of reasonableness.<sup>12</sup> 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 unless appellant can establish good cause for failing to report at the scheduled time.<sup>13</sup>

A failure to submit to a scheduled medical appointment may warrant suspension of a claimant's entitlement to further wage-loss compensation and medical benefits, unless he or she can establish good cause for the failure to report at the scheduled time.<sup>14</sup> The Board finds that appellant has not established good cause for her failure to report for the scheduled testing. OWCP allowed appellant 14 days to provide reasons for failing to appear.<sup>15</sup> Appellant did not respond within the time allotted.

On appeal appellant contended that the June 6, 2019 letter referring her to the prescribed EMG scheduled for June 10, 2019 had been sent to the wrong address. The evidence of record, however, establishes that the letter was sent to the most recent address of record at the time, as well as to her then-counsel, as appellant had failed to submit a change of address to OWCP prior

---

<sup>10</sup> *Id.*

<sup>11</sup> *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

<sup>12</sup> *A.E.*, Docket No. 18-1155 (issued February 21, 2019).

<sup>13</sup> *B.C.*, Docket No. 19-1058 (issued November 15, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> 5 U.S.C. § 8123.

to the issuance of its June 6, 2019 referral letter.<sup>16</sup> Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee.<sup>17</sup> Appellant has not submitted evidence of nondelivery of OWCP's development letter such that the presumption would be rebutted.<sup>18</sup>

As appellant did not attend the June 10, 2019 testing as scheduled and failed to provide good cause for failing to appear within 14 days of OWCP's June 13, 2019 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.

### **CONCLUSION**

The Board finds that OWCP properly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d), effective September 15, 2019, due to her failure to attend a scheduled medical appointment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

---

<sup>16</sup> See *supra* note 5.

<sup>17</sup> See *P.B.*, Docket No. 20-0148 (issued July 23, 2020); *J.J.*, Docket No. 13-1067 (issued September 20, 2013); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

<sup>18</sup> See *D.R.*, Docket No. 19-1899 (issued April 15, 2020).