

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

G.R., Appellant

and

**U.S. POSTAL SERVICE, SCRANTON POST
OFFICE, Scranton, PA, Employer**

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**Docket No. 20-0915
Issued: January 29, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 21, 2020 appellant filed a timely appeal from a March 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 16, 2020 decision, OWCP and the Board 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 wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

FACTUAL HISTORY

On June 26, 2019 appellant, then a 39-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date he rolled his left ankle on the bottom step of a residence, and scraped his left forearm on the wall of the residence, while in the performance of duty. He stopped work that day and returned to work with restrictions on July 5, 2019. On November 7, 2019 OWCP accepted appellant's claim for left ankle sprain of the tibiofibular and other ligaments and abrasions of the left forearm and elbow.

In a report dated November 5, 2019, Dr. John A. Lynott, a Board-certified orthopedic surgeon, related that appellant was seen for complaints of left ankle pain. He diagnosed left ankle synovitis versus anterior impingement versus lateral ligament pathology with possible peroneal tendon tear. After administering a left ankle injection, Dr. Lynott noted that, if his symptoms returned, appellant may require left ankle diagnostic arthroscopy with anterior debridement, anterior talofibular ligament reconstruction, and peroneal tendon exploration and repair.

On February 6, 2020 OWCP notified appellant that he was being referred for a second opinion examination on February 24, 2020 with Dr. Peter Feinstein, a Board-certified orthopedic surgeon, to determine the status of appellant's accepted work-related conditions, whether additional medical treatment was warranted, and whether appellant was able to return to work in a full-duty or light-duty capacity. It advised appellant to contact Dr. Feinstein's office to confirm the time of the appointment and directions. OWCP also advised appellant of his responsibility to attend the appointment and that, if he failed to do so, his compensation benefits could be suspended in accordance with 5 U.S.C. § 8123(d).

On February 25, 2020 OWCP learned that appellant had not kept his scheduled appointment on February 24, 2020 with Dr. Feinstein.

In a letter dated February 25, 2020, OWCP advised appellant that it proposed to suspend his wage-loss compensation and medical benefits as he failed to attend the medical examination scheduled for February 24, 2020. It afforded him 14 days to respond in writing with an explanation as to why he did not attend the examination with Dr. Feinstein. OWCP advised that, if good cause was not established, appellant's compensation benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until he attended and fully cooperated with the examination. Appellant was instructed to contact OWCP immediately if he intended to report to a rescheduled examination with Dr. Feinstein. He did not respond.

By decision dated March 16, 2020, OWCP suspended appellant's wage-loss compensation and medical benefits, effective on that date, finding that he failed to attend the scheduled medical examination with Dr. Feinstein and had not provided written evidence justifying his failure to attend or cooperate with the examination.

LEGAL PRECEDENT

Section 8123(a) 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'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.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 stops.⁶ 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.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 until the date on which the claimant agrees to attend the examination.

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

In a letter dated February 6, 2020, OWCP notified appellant that he was being referred for a second opinion examination on February 24, 2020 with Dr. Feinstein to determine the status of his accepted employment-related conditions, whether additional medical treatment was warranted and whether appellant was able to return to work in a full-duty or light-duty capacity. It informed appellant of his obligations to attend and cooperate with the examinations. The notice clearly explained that appellant's compensation benefits would be suspended for failure to report to or for obstruction of the examination. The letters also contained the date, time, and location of his appointment. Appellant did not appear for the appointment, nor did he attempt to reschedule the appointment prior to the designated time.

In a letter dated February 25, 2020, OWCP provided appellant 14 days to submit a valid reason for his failure to attend the scheduled medical appointment. No response was received.

³ 5 U.S.C. § 8123(a).

⁴ *R.L.*, Docket No. 20-0160 (issued October 30, 2020). *See also M.T.*, Docket No. 18-1675 (issued March 8, 2019); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

⁵ 20 C.F.R. § 10.320; 5 U.S.C. § 8123(a); *id.* at § 10.323; *A.P.*, Docket No. 19-0328 (issued August 6, 2019); *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

⁶ 5 U.S.C. § 8123(d); *id.* at § 10.323; *A.P.*, *id.*; *D.K.*, *id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010); *R.L.*, *supra* note 4.

The Board, thus, finds that appellant has not established good cause for failing to appear for the scheduled examination on February 24, 2020. OWCP properly determined that he failed to attend a scheduled medical examination without good cause and suspended his wage-loss compensation and medical benefits.

On appeal appellant asserts that he was scheduled to work on the day of the medical evaluation and he forgot to calendar the medical appointment. He noted that he wanted to reschedule the appointment, but could not locate his paperwork regarding the appointment. As explained above, appellant did not appear for the appointment, nor did he attempt to reschedule the appointment prior to the designated time.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits 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 March 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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