

OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective October 3, 2019, due to her failure to attend a scheduled medical examination; and (2) whether OWCP properly determined that she abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On December 11, 2013 appellant, then a 62-year-old human resources specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2013 she fell to the ground when exiting the employing establishment building during a fire drill striking both hands, both knees, and her right hip, and twisting her right ankle, left wrist, and back while in the performance of duty. She stopped work on November 19, 2013 and retired on November 20, 2014. On June 19, 2014 OWCP accepted the claim for sprain of the back, lumbar region; and right ankle sprain. It paid appellant wage-loss compensation on the supplemental rolls beginning January 12, 2014 and on the periodic rolls beginning November 12, 2017.

In a December 20, 2018 letter, OWCP notified appellant that she was being referred for an impartial medical examination on January 17, 2019 with Dr. Sankara Kothakota, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion evidence between her attending physician, Dr. Joshua A. Thomas, an osteopath and Board-certified physiatrist, and OWCP's second opinion physician, Dr. Matthew Drake, a Board-certified orthopedic surgeon, regarding her continuing disability and medical residuals due to the accepted November 19, 2013 employment conditions. The letter informed appellant of her obligations to attend and cooperate with the examination and explained that her compensation benefits would be suspended for failure to report to or for obstruction of the examination, pursuant to 5 U.S.C. § 8123(d). The letter also

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, appellant asserted that she did not abandon her oral hearing, but had experienced a neurological incident and lost all cognitive abilities on the date and at the time of the scheduled oral hearing. She further asserted that she had contacted OWCP prior to the scheduled time of the oral hearing and provided a letter to OWCP dated February 12, 2020. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the February 10, 2020 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.*

contained the date, time, and location of her appointment and were mailed to her address of record in the ordinary course of business. On April 15, 2019 the medical scheduler advised OWCP that appellant did not attend the examination scheduled for January 17, 2019.

In a notice dated May 20, 2019, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for January 17, 2019. It afforded her 14 days to respond in writing with an explanation as to why she did not attend the examination with Dr. Kothakota. OWCP advised appellant that, if good cause was not established, her compensation benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until she attended and fully cooperated with the examination. It instructed her to contact OWCP immediately if she intended to report to a rescheduled examination with Dr. Kothakota. Appellant did not respond in writing within the afforded period and did not indicate that she intended to report to a rescheduled examination.

In a June 10, 2019 memorandum of telephone call (Form CA-110), OWCP noted that appellant reported that she never received notification of the scheduled examination with Dr. Kothakota.

By decision dated October 3, 2019, OWCP suspended appellant's wage-loss compensation and medical benefits effective that date, pursuant to 5 U.S.C. § 8123(d), due to her failure, without good cause, to attend the medical examination scheduled for January 17, 2019.

On October 15, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She asserted that she had not received the December 20, 2018 letter. Appellant also noted that she had been hospitalized for six days and that she had a surgery scheduled for November 8, 2019. She provided a new mailing address.

In a December 11, 2019 letter, OWCP's hearing representative notified appellant of a telephonic hearing scheduled for January 29, 2020 at 11:15 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. The hearing representative mailed the notice to appellant's last known address of record as provided on October 15, 2019. She did not appear for the hearing and no request for postponement was made.

By decision dated February 10, 2020, OWCP determined that appellant had abandoned her request for an oral hearing. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

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

⁴ 5 U.S.C. § 8123.

the choice of medical examiners are matters within the province and discretion of OWCP.⁵ 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.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'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.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 -- ISSUE 1

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective October 3, 2019, due to her failure to attend a scheduled medical examination.

In a December 20, 2018 letter, OWCP notified appellant that she was being referred for an impartial medical examination on January 17, 2019 with Dr. Kothakota, to resolve a conflict of medical opinion evidence between her attending physician, Dr. Thomas and OWCP's second opinion physician, Dr. Drake, regarding her continuing disability and medical residuals due to the accepted November 19, 2013 employment injuries. The letter informed her of her obligations to attend and cooperate with the examination and explained that her compensation benefits would be suspended for failure to report to or for obstruction of the examination. The letter also contained the date, time, and location of appellant's appointment.

Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule.¹⁰ The December 20, 2018 letter was sent to appellant's then address of record and is presumed to have been received by her absent any notice of nondelivery. She has not submitted evidence to rebut this presumption.

⁵ See *Q.V.*, Docket No. 21-1188 (issued May 26, 2022); *R.D.*, Docket No. 20-1551 (issued November 8, 2021); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

⁶ 20 C.F.R. § 10.320.

⁷ 5 U.S.C. § 8123(d); see also *id.* at § 10.323; *Q.V.*, *supra* note 5; *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

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

⁹ *Id.* at Chapter 2.810.13e.

¹⁰ See *Q.V.*, *supra* note 5; *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *James A. Gray*, 54 ECAB 277 (2002); *Claudia J. Whitten*, 52 ECAB 483 (2001).

Appellant did not appear for the January 17, 2019 appointment, nor did she attempt to reschedule the appointment prior to the designated time. In a notice dated May 20, 2019, OWCP provided her 14 days to submit a valid reason in writing for her failure to attend the scheduled medical appointment. Appellant did not respond in writing.¹¹

As appellant did not attend the impartial medical examination as scheduled and failed to provide good cause for failing to appear within 14 days of OWCP's May 20, 2019 notice of proposed suspension, the Board finds that OWCP properly suspended her wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d), effective October 3, 2019.¹²

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹³ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁴ The hearing representative retains complete discretion to set the time, place, and method of the hearing.¹⁵ OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹⁶

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁷

¹¹ See *S.Y.*, Docket No. 15-1313 (issued November 2, 2015); *M.B.*, Docket No. 10-1755 (issued March 24, 2011); *B.P.*, Docket No. 10-1205 (issued February 22, 2011); *S.B.*, 58 ECAB (2007) (the claimant did not timely respond in writing to the notice of proposed suspension or indicate willingness to reschedule to undergo the medical appointment).

¹² See *Q.V.*, *supra* note 5; *A.H.*, Docket No. 21-0688 (issued October 6, 2021); *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

¹³ 20 C.F.R. § 10.616(a).

¹⁴ *Id.* at § 10.617(b).

¹⁵ *Id.* at § 10.617(a).

¹⁶ See *M.P.*, Docket No. 20-1152 (issued May 25, 2022); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹⁷ 20 C.F.R. § 10.622(f); *supra* note 8 at Chapter 2.1601.6g (October 2011); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

The record establishes that appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review following OWCP's October 3, 2019 decision. In a December 11, 2019 letter, the hearing representative notified appellant that it had scheduled a telephonic hearing for January 29, 2020 at 11:15 a.m. EST. The notice included a toll-free number to call and provided the appropriate passcode. The hearing representative mailed the notice to appellant's last known address of record. Appellant had previously notified OWCP of her change of address on October 15, 2019. The hearing representative's notice was not returned as undeliverable. As noted, absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.¹⁸ The current record is devoid of evidence to rebut the "mailbox rule" presumption that appellant received OWCP's December 11, 2019 notice of hearing. The hearing notice was properly addressed to appellant's last known address. She did not call in as instructed for the January 29, 2020 scheduled telephonic hearing and there is no indication that she requested postponement of the telephonic hearing. Moreover, she did not submit a written request within the 10 days after the date set for the telephonic hearing and request that another telephonic hearing be scheduled. Under the circumstances, the Board finds that appellant abandoned her telephonic hearing request.

On appeal, appellant alleges that she attempted to contact OWCP and that she was incompetent on the January 29, 2020, due to a neurological condition. Pursuant to OWCP's regulations, if a claimant fails to appear at the hearing, he or she may request in writing within 10 days after the date set for the hearing that another hearing be scheduled, for good cause shown. Appellant does not allege, nor does the record substantiate that she submitted a written request, substantiating good cause, within 10 days following the date of the scheduled hearing.¹⁹

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective October 3, 2019, due to her failure to attend a scheduled medical examination. The Board further finds that OWCP properly determined that she abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

¹⁸ *Supra* note 11.

¹⁹ *See C.W.*, Docket No. 12-0647 (issued August 10, 2012).

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2019 and February 10, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 29, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board