

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

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| J.R., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0049 |
| |) | Issued: July 28, 2022 |
| DEPARTMENT OF THE ARMY, U.S. ARMY |) | |
| CORPS OF ENGINEERS, Jacksonville, FL, |) | |
| Employer |) | |
| _____ |) | |

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

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On October 12, 2021 appellant filed a timely appeal from an April 13, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 22-0049.²

On July 27, 2020 OWCP referred appellant to Dr. Rishi J. Panchal, an osteopath, for a second opinion examination scheduled on August 21, 2020. The letter to appellant was inaccurately addressed.³ An August 25, 2020 memorandum of telephone call (Form CA-110) indicated that QTC Medical Services, OWCP's scheduling service, called and stated that he did

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from April 13, 2021, the date of OWCP's last decision, was October 10, 2021. As this fell on a Sunday, and the next day, Monday, October 11, 2021 was a federal holiday, appellant had until Tuesday, October 12, 2021 to file the appeal. *See* 20 C.F.R. § 501.3(f)(1).

² This case has previously been before the Board on different issues. Docket No. 98-1039 (issued November 19, 1999); Docket No. 02-0976 (issued August 27, 2002); Docket No. 13-0211 (issued June 25, 2013); Docket No. 19-1321 (issued February 7, 2020).

³ OWCP incorrectly noted appellant's apartment number on the referral letter.

not appear for the scheduled appointment. OWCP requested that QTC Medical Services “reschedule out of courtesy to the claimant.”

In an August 27, 2020 notice, OWCP proposed to suspend appellant’s wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d) as he failed to attend the examination that was scheduled for August 21, 2020 with Dr. Panchal. It advised him to provide a written explanation of his reasons for failing to attend the scheduled examination within 14 days. OWCP mailed the notice to appellant’s address of record.

By decision dated April 13, 2021, OWCP finalized its proposed suspension, effective that date. It found that, in correspondence dated July 27, 2020, it had directed appellant to report for a scheduled August 21, 2020 examination by Dr. Panchal. OWCP determined that appellant had not attended the examination or shown good cause for his failure to attend the examination.

The Board has duly considered the matter and finds that OWCP improperly suspended appellant’s wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d) for failing to attend a scheduled medical appointment. OWCP’s procedures provide that a claimant’s failure to appear for a medical appointment at OWCP’s direction can result in a suspension of benefits.⁴ Its procedures further provide that, after contacting the physician and setting the date and time of the appointment, OWCP must notify the claimant in writing as to the name and address of the physician to whom he or she is being referred as well as the date and time of the appointment.⁵ OWCP’s July 27, 2020 letter referring appellant for the appointment scheduled with Dr. Panchal for August 21, 2020 was not mailed to his address of record in accordance with OWCP’s procedures. Consequently, the Board will reverse OWCP’s April 13, 2021 suspension decision.⁶ The case will be returned to OWCP for reinstatement of appropriate compensation benefits.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.16 (February 2013).

⁵ *Id.* at Chapter 3.500.3d(1) (June 2015).

⁶ *See Mazie M. Thompson*, Docket No. 04-0821 (issued June 15, 2004).

IT IS HEREBY ORDERED THAT the April 13, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 28, 2022
Washington, DC

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

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

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