



to her failure to attend a scheduled medical examination; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On June 13, 2017 appellant, then a 29-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she was followed, attacked, and repeatedly hit on the head when delivering her mail route while in the performance of duty. She stopped work on June 13, 2017. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

On June 27, 2017 OWCP accepted the claim for contusion of unspecified part of the head and contusion of the other part of head. On January 4, 2018 it expanded acceptance of the claim to include post-traumatic stress disorder, acute, and on February 18, 2022, OWCP accepted headache and concussion without loss of consciousness.

OWCP paid appellant wage-loss compensation on the supplemental rolls commencing July 29, 2017 and on the periodic rolls commencing November 11, 2018.

In a letter dated February 18, 2022, OWCP initially notified appellant that it was in process of scheduling a second opinion medical evaluation. In a subsequent letter dated May 9, 2022, it notified her that it had scheduled a June 15, 2022 second opinion examination with Dr. Mahmoud S. Mohamed, a Board-certified neurologist, in Toledo Ohio. OWCP explained that appellant's entitlement to compensation could be suspended, pursuant to 5 U.S.C. § 8123(d), if she refused to submit to or obstructed an examination.

In a June 16, 2022 memorandum, the medical scheduler notified OWCP that appellant did not attend the scheduled June 15, 2022 appointment with Dr. Mohamed.

In a notice dated June 17, 2022, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits, as she failed to attend the medical examination scheduled for June 15, 2022. It afforded her 14 days to respond in writing with an explanation as to why she did not attend the examination with Dr. Mohamed. 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 attend a rescheduled examination with Dr. Mohamed. OWCP did not receive a response within the afforded period.

By decision dated July 19, 2022, 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 June 15, 2022.

On August 8, 2022 appellant requested reconsideration. A memorandum of telephone call (Form CA-110) dated August 8, 2022 reflects that on that day she called OWCP and left a voicemail message indicating that she did not attend the medical examination because it was in another city and she had COVID-19.

By decision dated August 23, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that she had not submitted any evidence to substantiate that she was unable to travel to the scheduled examination.

### **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.<sup>3</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>4</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>5</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>6</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>7</sup> If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.<sup>8</sup>

### **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 July 19, 2022, due to her failure to attend a scheduled medical examination.

In a letter dated May 9, 2022, OWCP notified appellant that she was being referred for a second opinion examination on June 15, 2022 with Dr. Mohamed. 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 attend or for obstruction of the examination. The letter also contained the date, time, and location of appellant's appointment.

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<sup>3</sup> 5 U.S.C. § 8123.

<sup>4</sup> *R.T.*, Docket No. 20-0933 (issued July 29, 2022); *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).

<sup>5</sup> 20 C.F.R. § 10.320.

<sup>6</sup> 5 U.S.C. § 8123(d); *see also id.* at § 10.323; *R.T.*, *supra* note 4; *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

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

<sup>8</sup> *Id.* at Chapter 2.810.13e.

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.<sup>9</sup> The May 9, 2022 letter was sent to appellant's last known address of record by OWCP and it is presumed to have been received by her absent any notice of nondelivery. She has not submitted evidence to rebut this presumption.<sup>10</sup>

Appellant did not appear for the June 15, 2022 medical appointment, nor did she attempt to reschedule the appointment prior to the designated time. In a notice dated June 17, 2022, 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.<sup>11</sup>

As appellant did not attend the second opinion examination as scheduled and failed to provide good cause for failing to appear within 14 days of OWCP's June 17, 2022 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 July 19, 2022.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>13</sup>

Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>14</sup> This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup> Section 10.608(b) provides that, when a request for reconsideration is timely, but fails

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<sup>9</sup> See *C.W.*, Docket No. 21-0943 (issued February 17, 2023); *R.D.*, Docket No. 20-1551 (issued November 8, 2021); *James A. Gray*, 54 ECAB 277 (2002).

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

<sup>11</sup> *R.T.*, *id.*; 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).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 8128(a).

<sup>14</sup> 20 C.F.R. § 10.608(a).

<sup>15</sup> *Id.* at § 10.606(b)(3); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On August 8, 2022 appellant requested reconsideration of the suspension of her compensation benefits. She did not submit any written argument in support of her request. Appellant left a voicemail with OWCP on that day alleging that she did not attend the examination because it was in a different city, she had COVID-19 and was unable to travel on the day of the evaluation.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case was whether OWCP properly suspended her wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective July 19, 2022, due to her failure to attend a scheduled medical examination. Appellant alleged in a voicemail that she was unable to travel to the appointment on June 15, 2022 because it was in Toledo, Ohio and she had COVID-19. However, she did not submit relevant and pertinent new evidence regarding her failure to attend the scheduled medical examination within the time period prescribed by OWCP.<sup>17</sup> Therefore, appellant is also not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **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 July 19, 2022, due to her failure to attend a scheduled medical examination. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>16</sup> *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

<sup>17</sup> *See S.L.*, Docket No. 21-0201 (issued June 10, 2022); *P.C.*, Docket No. 18-1703 (issued March 22, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 19 and August 23, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 4, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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