

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

D.C., Appellant	)	
	)	
and	)	Docket No. 23-0217
	)	Issued: June 6, 2023
U.S. POSTAL SERVICE, DOMINICK V.	)	
DANIELS PROCESSING & DISTRIBUTION	)	
CENTER, Kearney, NJ, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 1, 2022 appellant filed a timely appeal from a September 19, 2022 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>

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

<sup>2</sup> The Board notes that, following the issuance of the September 19, 2022 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 wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective September 19, 2022, due to his failure to attend a scheduled medical examination.

## FACTUAL HISTORY

On January 16, 2002 appellant, then a 58-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a head injury when he walked out of the back of his truck and he scraped his head on a screw sticking out of a lock while in the performance of duty. He stopped work on January 16, 2002 and returned to full-duty work on January 22, 2002. On May 14, 2002 appellant filed a notice of recurrence (Form CA-2a) claiming a recurrence of total disability on March 6, 2002, causally related to his alleged January 16, 2002 injury. He stopped work on March 6, 2002.

OWCP accepted appellant's traumatic injury claim for contusion of face, scalp, and neck except eye(s); displacement of lumbar intervertebral disc without myelopathy; sprain of neck; lumbar intervertebral disc disorder with myelopathy; brachial neuritis or radiculitis, not otherwise specified; and myalgia and myositis, not otherwise specified. It paid him wage-loss compensation for total disability on the supplemental rolls as of March 13, 2002 and on the periodic rolls as of September 8, 2002.

By letter dated January 26, 2022, OWCP informed appellant that it was in the process of scheduling a second opinion examination to determine the nature of his accepted employment-related conditions and extent of disability, and to obtain appropriate treatment recommendations.

In a letter dated January 28, 2022, QTC Medical Services (QTC), OWCP's scheduling service, notified appellant that it had scheduled a February 14, 2022 second opinion examination with Dr. Paul Lerner, a Board-certified neurologist. It explained that his entitlement to wage-loss compensation and medical 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 contained the date, time, and location of appellant's appointment and was mailed to his last known address of record.

By letter dated February 28, 2022, QTC notified OWCP that appellant failed to attend the February 14, 2022 appointment with Dr. Lerner.

In a letter dated April 7, 2022, QTC notified appellant that it had scheduled an April 27, 2022 second opinion examination with Dr. Lerner. It again informed him of his obligations to attend and cooperate with the examination and explained that his compensation benefits would be suspended, pursuant to 5 U.S.C. § 8123(d), for failure to report to or for obstruction of the examination. The letter also contained the date, time, and location of appellant's appointment and was mailed to his address of record.

By letter dated May 25, 2022, QTC advised OWCP that appellant failed to attend the April 27, 2022 appointment with Dr. Lerner.

In a notice dated May 31, 2022, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as he failed to attend the medical examination scheduled for April 27, 2022. It afforded him 14 days to respond in writing with an explanation as to why he failed to attend the examination with Dr. Lerner. 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. It instructed him to contact OWCP immediately if he intended to report to a rescheduled examination with Dr. Lerner. Appellant did not respond within the afforded period.

By decision dated September 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 his failure, without good cause, to attend the medical examination scheduled for April 27, 2022.

### **LEGAL PRECEDENT**

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**

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), effective September 19, 2022, due to his failure to attend a scheduled medical examination.

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<sup>3</sup> 5 U.S.C. § 8123.

<sup>4</sup> 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; *Q.V.*, *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.

Initially in a letter dated January 28, 2022, OWCP's scheduling service, notified appellant that it had scheduled a February 14, 2022 second opinion examination with Dr. Lerner. Appellant did not attend the February 14, 2022 second opinion examination.

In an April 7, 2022 letter, OWCP notified appellant that he was being referred for a second opinion medical examination on April 27, 2022 with Dr. Lerner, to determine the status of his accepted employment-related conditions and disability. The letter informed him of his obligations to attend and cooperate with the examination and explained that his 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.<sup>9</sup> The April 7, 2022 letter was sent to appellant's address of record and is presumed to have been received by him absent any notice of nondelivery. Appellant has not submitted evidence to rebut this presumption.

Appellant did not appear for the April 27, 2022 appointment, nor did he attempt to reschedule the appointment prior to the designated time. In a notice dated May 31, 2022, OWCP provided him 14 days to submit a valid reason in writing for his failure to attend the scheduled medical appointment. Appellant did not respond.

As appellant did not attend the examination as scheduled and failed to provide good cause for failing to appear within 14 days of OWCP's May 31, 2022 notice of proposed suspension, the Board finds that OWCP properly suspended his wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d), effective September 19, 2022.<sup>10</sup>

### **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 September 19, 2022, due to his failure to attend a scheduled medical examination.

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<sup>9</sup> See *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).

<sup>10</sup> See *R.T.*, Docket No. 20-0933 (issued July 29, 2022); *Q.V.*, *supra* note 4; *A.H.*, Docket No. 21-0688 (issued October 6, 2021); *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2023  
Washington, DC

Patricia H. Fitzgerald, 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