

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

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| G.T., Appellant |) | |
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| and |) | Docket No. 23-0123 |
| |) | Issued: November 22, 2023 |
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| DEPARTMENT OF THE ARMY, MADIGAN |) | |
| ARMY MEDICAL CENTER, JOINT BASE |) | |
| LEWIS-McCHORD, WA, Employer |) | |
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Appearances: *Case Submitted on the Record*
Howard L. Graham, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 3, 2022 appellant, through counsel, filed a timely appeal from a May 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that following the May 24, 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.*

³ 5 U.S.C. § 8101 *et seq.*

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 August 16, 2020, due to her failure to attend a scheduled medical examination.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 13, 2011 appellant, then a 41-year-old assistant program manager, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries to her upper extremities due her federal employment duties including typing on a computer and a hand-held device. She stopped work on April 15, 2011. OWCP accepted the claim for bilateral carpal tunnel syndrome and enthesopathy of the right wrist/carpus, bilateral cubital tunnel syndrome, bilateral de Quervain's tenosynovitis, and a single episode of major depression. It paid appellant wage-loss compensation on the supplemental rolls beginning on April 15, 2022 and on the periodic rolls beginning January 15, 2012.

On April 20, 2020 OWCP advised appellant that it was assigning her a registered nurse to coordinate care and assist in her recovery.

On April 27, 2020 appellant, through counsel, informed OWCP that she was in Canada. She noted that the United States (U.S.)-Canadian Border was closed to all but essential personnel due to the global COVID-19 pandemic.

In a July 1, 2020 letter, OWCP referred appellant for a second opinion medical examination on July 28, 2020 with Dr. Michael Friedman, an osteopath and a Board-certified psychiatrist. The letter informed appellant of her obligations to attend and cooperate with the examination, noted that OWCP had verified that the examination was permissible per state/local guidelines related to COVID-19, 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 contained the date, time, and location of her appointment and was mailed to her address of record in the ordinary course of business.

On July 17, 2020 appellant provided documentation of an undated travel advisory from the U.S. Department of State advising all U.S. citizens to avoid all international travel due to the global impact of COVID-19. This advisory directed U.S. citizens to arrange for immediate return to the U.S. unless they were prepared to remain abroad for an indefinite period. It further directed that U.S. citizens who lived abroad should avoid all international travel as travel plans may be severely disrupted and they may be forced to remain outside of the U.S. for an indefinite timeframe. On March 13, 2020 the Department of Homeland Security provided arrival restrictions for U.S. citizens arriving from China, Iran, and certain European countries including Greece, which limited travel to through 1 of 13 airports, and required enhanced entry screening and self-quarantine for

⁴ Docket No. 18-1302 (issued October 22, 2019).

14 days. It also banned entry of non-U.S. citizens from China, Iran, and certain European countries, including Greece.

In a July 27, 2020 memorandum of telephone call (Form CA-110), counsel informed OWCP that appellant was in Greece and could not attend the July 28, 2020 second opinion appointment.

In a notice dated July 28, 2020, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for July 28, 2020. It afforded her 14 days to respond in writing with an explanation as to why she did not attend the examination with Dr. Friedman. 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. Friedman.

Subsequently, OWCP received a July 15, 2020 letter from appellant, who explained that she had attended a memorial for her parents in Canada in March 2020. On March 11, 2020 the President of the U.S. restricted entry and closed the land border with Canada to nonessential travel. Appellant asserted that she would have been unable to return to the U.S. until July 31, 2020, when the border restrictions with Canada were lifted. As she was unable to return to the U.S., as a Greek citizen, she traveled to Greece after March 11, 2020. Appellant reported that she was willing to cooperate with the directed examination, although she was currently living in Greece.

By decision dated August 12, 2020, OWCP suspended appellant's wage-loss compensation and medical benefits effective August 16, 2020, pursuant to 5 U.S.C. § 8123(d), due to her failure, without good cause, to attend the medical examination scheduled for July 28, 2020.

On September 1, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review from the August 12, 2020 decision. He contended that appellant was stranded in Greece as the U.S. Department of State and the Department of Homeland Security declared that U.S. citizens should not travel. Counsel further contended that if appellant returned from Greece, the Centers for Disease Control required a 14-day quarantine which would have made it impossible to attend the second opinion examination.

The oral hearing took place on December 17, 2020. Appellant again agreed to attend a rescheduled second opinion examination. She related that she was in Canada on March 11, 2020, when the President of the U.S. closed the border of the U.S. for nonessential travel. The restrictions extended until July 31, 2020. Appellant asserted that she contacted OWCP immediately when she received the July 1, 2020 notice to appear at the scheduled examination. She noted that the law prohibited her return and, if her return had been authorized, she would have needed to quarantine for 14 days. Appellant advised that plane tickets were also unreasonably expensive, around \$4,000.00 at that time. Counsel asserted that OWCP had not provided appellant a reasonable opportunity to return to the U.S. for the examination scheduled for July 28, 2020, given the pandemic and health advisory, and noted that the U.S. State Department had advised against travel.

Following the oral hearing, OWCP received documents dated March 2, 2021 describing the travel requirements for all air passengers arriving in the U.S. including proof of a negative COVID-19 test. It also received information from the U.S. Embassy & Consulate in Greece dated

March 2, 2021 noting that there were no direct flights between the U.S. and Greece, but that other routes were available to return to the U.S.

By decision dated March 10, 2021, OWCP's hearing representative affirmed the August 12, 2020 decision. She found that OWCP had properly suspended appellant's wage-loss and medical benefits for refusing a medical examination. The hearing representative found that appellant did not provide any evidence to demonstrate that a travel ban existed for U.S. citizens on or after June 22, 2020.

On July 20, 2021 appellant, through counsel, requested reconsideration. Counsel contended that appellant's travel to Greece and subsequent travel advisories and the risk of infection of COVID-19 provided good cause not to attend the scheduled second opinion examination. He noted that a March 2020 U.S. Department of State advisory provided that U.S. citizens should avoid all international travel, including those who live abroad, and would be subject to enhanced entry and 14 days of quarantine upon return. In a July 7, 2020 update, the U.S. Department of State advised that U.S. citizens could return but that there were no direct flights with Greece. Counsel maintained that OWCP had unreasonably ignored appellant's offer to attend a schedule opinion examination in Greece. He noted that she had submitted a July 15, 2020 report from her attending physician. Appellant provided an April 2020 notice of the impact of COVID-19 on the medical evaluations and scheduling appointments for coal mine workers.

By decision dated May 24, 2022, OWCP denied modification of its prior decision.

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.⁵ 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.⁶ 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.⁷ 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.⁸ 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.⁹ If good cause for the refusal or obstruction is not

⁵ 5 U.S.C. § 8123.

⁶ See *R.T.*, Docket No. 20-0933 (issued July 29, 2022); *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).

⁷ 20 C.F.R. § 10.320.

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

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.¹⁰

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 August 16, 2020, due to her failure to attend a scheduled medical examination.

In a letter dated July 1, 2020, OWCP notified appellant that she was being referred for a second opinion medical examination on July 28, 2020, and it further informed her of her obligation to attend and cooperate with the examination. It explained that her compensation benefits would be suspended for failure to report to or for obstruction of the examination. The July 1, 2020 letter specifically advised appellant of the date, time, and location of her appointment.

On July 17, 2020 appellant provided documentation of an undated travel advisory from the U.S. Department of State advising all U.S. citizens to avoid all international travel due to the global impact of COVID-19. On March 13, 2020 the Department of Homeland Security provided arrival restrictions for U.S. citizens arriving from China, Iran, and certain European countries including Greece, which limited travel to through 1 of 13 airports, and required enhanced entry screening and self-quarantine for 14 days. On July 27, 2020 counsel informed OWCP that appellant was in Greece and would not attend the July 28, 2020 appointment.

In its July 28, 2020 notice, OWCP provided appellant 14 days to submit a valid reason for her failure to attend the scheduled medical appointment. In response, appellant submitted a statement dated July 15, 2020 in which she explained that she had attended a memorial for her parents in Canada in March 2020 and that on March 11, 2020 the land border with Canada closed to non-essential travel due to the COVID-19 pandemic. Appellant then traveled to Greece and was currently living there. She, a U.S. citizen, was not restricted from travel back to the U.S.¹¹ Appellant did not provide medical documentation indicating her travel limitation.¹²

While these documents were received by OWCP within 14 days of the proposed notification of suspension, they do not present a clear basis to find that appellant had good cause for refusing to attend the scheduled appointment.¹³ Voluntary travel is not good cause for the

¹⁰ *Id.* at Chapter 2.810.13e.

¹¹ *See Sharon Handy*, Docket No. 04-1682 (issued January 7, 2005) (relocation outside of the travel area is not good cause for failure to attend a medical appointment).

¹² *C.R.*, Docket No. 20-1089 (issued January 26, 2021); *R.L.*, Docket No. 20-0160 (issued October 30, 2020); *Sherry J. Fryman*, Docket No. 04-1683 (issued December 17, 2004); *Joseph Courto*, Docket No. 11-1392 (issued December 18, 2001).

¹³ *See A.H.*, Docket No. 21-0688 (issued October 6, 2021); *A.P.*, Docket No. 19-0328 (issued August 6, 2019) (appellant's travel from New Jersey to Florida due to his father's death in November 2017 was not good cause for the failure to attend a medical appointment in New Jersey in January 2018); *R.C.*, Docket No. 09-2328 (issued July 12, 2010); *but see Danny C. Doege*, Docket No. 00-1855 (issued May 14, 2002) (noting that travel before receiving the notice of an appointment could be an exception to the rule that voluntary travel plans were not good cause for the failure to attend a scheduled medical appointment).

failure to attend a scheduled medical appointment.¹⁴ For this reason, the Board finds that appellant has not established good cause for failing to appear for the scheduled examination on July 28, 2020.

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 July 28, 2020 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 August 16, 2020.

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 August 16, 2020, due to her failure to attend a scheduled medical examination.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2023
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

¹⁴ *Id.*