

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

S.L., Appellant)	
)	
and)	Docket No. 23-0887
)	Issued: January 17, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Oak Park, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 14, 2023 appellant filed a timely appeal from a February 22, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 22, 2023 decision, appellant submitted additional evidence to OWCP and with her appeal to the Board. 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 January 20, 2022, due to her failure to attend a scheduled medical examination.

FACTUAL HISTORY

On March 11, 2019 appellant, then a 49-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 11, 2019 she fell and injured her lower back, buttocks, and left hand when delivering mail while in the performance of duty. She stopped work on March 11, 2019. OWCP accepted appellant's claim for left hand abrasion and lumbar strain. It paid her wage-loss compensation on the supplemental rolls, effective April 26, 2019.

In an August 19, 2020 letter, QTC Medical Services (QTC), OWCP's scheduling service, notified appellant that it had scheduled a September 23, 2020 second opinion examination with Dr. Allan Brecher, a Board-certified orthopedic surgeon, regarding her continuing disability and medical residuals due to the accepted March 11, 2019 employment injury. 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 contained the date, time, and location of her appointment, and was mailed to her last known address of record in the ordinary course of business.

In a September 18, 2020 memorandum of telephone call (Form CA-110), OWCP advised that appellant indicated she would not be able to attend the second opinion examination because her condition had worsened, and she was now on complete bed rest.

In a letter dated September 22, 2020, QTC notified appellant that her appointment with Dr. Brecher was rescheduled for October 22, 2020.

By letter dated October 23, 2020, QTC notified OWCP that appellant did not attend the examination scheduled for October 22, 2020.

In a notice dated November 4, 2020, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for October 22, 2020. It afforded her 14 days to respond in writing with an explanation as to why she did not attend the examination with Dr. Brecher. 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. Brecher.

In an undated statement, appellant alleged that there had been several problems beyond her control, which prevented her from returning to work. She explained that she had high blood pressure due to the pain of the nature of her injury. Appellant also alleged that the coronavirus had slowed down the process, and the doctor she was referred to by the U.S. Department of Labor

stopped seeing nonessential procedures. She also contended that she was under strict orders to be on bed rest when she received notification regarding the rescheduled appointment.³

In a June 16, 2021 letter, QTC notified appellant that her appointment was rescheduled for September 9, 2021 with Dr. Steven Chandler, an osteopath specializing in orthopedic surgery.

In a September 10, 2021 Form CA-110, OWCP advised that appellant indicated her daughter was in the hospital and had tested positive for COVID-19. Appellant also noted that she was having COVID-19 symptoms and asked to reschedule the examination.

In a September 8, 2021 letter entered into the case record on September 10, 2021, QTC informed appellant that her appointment with Dr. Chandler was rescheduled for November 22, 2021.

In a Form CA-110 dated November 23, 2021, OWCP noted that appellant had called and explained that her daughter was hospitalized with COVID-19 and that she had COVID-19 like symptoms and had to reschedule the examination.

In a November 24, 2021 letter, QTC informed appellant that her appointment with Dr. Chandler was rescheduled for December 21, 2021. The letter also contained the date, time, and location of her appointment and was mailed to her last known address of record in the ordinary course of business.

On December 22, 2021 QTC advised OWCP that appellant did not attend the examination scheduled for December 21, 2021 with Dr. Chandler.

In a Form CA-110 dated January 5, 2022, OWCP advised that appellant had called and asserted that she did not attend the examination scheduled for December 21, 2021 because she was totally disabled and incapacitated. Appellant indicated that her doctor sent a letter.

In a notice dated January 5, 2022, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits because she failed to attend the medical examination scheduled for December 21, 2021 at 1:00 p.m. It afforded her 14 days to respond in writing with an explanation as to why she did not attend the examination with Dr. Chandler. 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. Chandler.

On January 7, 2022 OWCP received a December 15, 2021 work status note by Dr. Tony A. Hampton, a family medicine specialist, who indicated that appellant was seen by his clinic on December 15, 2021. Dr. Hampton noted that she should be excused from work on that date "to be able to make her appointment." He reported that appellant was totally disabled from February 15, 2021 through April 15, 2022.

³ Appellant was separated from employment, effective October 23, 2020.

On January 7, 2022 OWCP also received an undated statement wherein appellant explained that when she received the date in October to visit the doctor referred by OWCP, she was placed on strict doctor's orders for bed rest. Appellant noted that she notified OWCP, and also had her doctor send a letter. She also indicated that during the month of October, her blood pressure was very high and near the stroke zone. Appellant explained that she was not well enough to go to the doctor alone.

By decision dated January 20, 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 December 21, 2021.

On April 25, 2022 appellant requested reconsideration. She asserted that she could not attend the medical appointment with Dr. Chandler because it would put his medical team at risk due to COVID-19 symptoms, which had not yet resolved.

In work status notes dated March 21 and May 31, 2022, Dr. Hampton indicated that appellant was evaluated in his office. He requested that appellant be excused for her absence from "work" on these dates "to be able to make her appointment."

OWCP also received hospital records and diagnostic reports dated May 11 through 16, 2022.

By decision dated November 2, 2022, OWCP denied modification of the January 20, 2022 decision.⁴

On January 3, 2023 appellant requested reconsideration.

Appellant submitted a January 27, 2023 progress report by Dr. Hampton who provided examination findings, and diagnosed lumbar stenosis with neurogenic claudication, left shoulder impingement syndrome, and chronic bilateral low back pain with left-sided sciatica.

By decision dated February 22, 2023, OWCP denied modification of the November 2, 2022 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

⁴ By decision dated December 1, 2022, OWCP expanded the acceptance of appellant's claim to include lumbar spinal stenosis with neurogenic claudication, lumbar intervertebral disc degeneration, and pelvis/lumbar spine sprain.

⁵ 5 U.S.C. § 8123.

⁶ 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).

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 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 January 20, 2022, due to her failure to attend a scheduled medical examination.

In a letter dated August 19, 2020, initially QTC notified appellant that she was being referred for a second opinion examination on September 23, 2020 with Dr. Brecher regarding her continuing disability and medical residuals due to the accepted March 11, 2019 employment injury. The letter was sent to her last known address of record, 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. In a subsequent November 24, 2021 letter, QTC notified appellant that her appointment was rescheduled for December 21, 2021 with Dr. Chandler. This letter also contained appropriate guidance including the date, time, and location of her 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.¹¹ The November 24, 2021 letter was sent to appellant's last known address of record, and is presumed to have been received by her absent any notice of nondelivery. Appellant has not submitted evidence to rebut this presumption. She did not appear for the December 21, 2021 appointment.¹²

In its January 5, 2022 notice, OWCP provided appellant 14 days to submit a valid reason for her failure to attend the scheduled medical appointment on December 21, 2021. In an undated statement, appellant explained that she was placed on strict doctor's orders for bed rest when she

⁷ 20 C.F.R. § 10.320.

⁸ 5 U.S.C. § 8123(d); *see also id.* at § 10.323; *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 (February 2022).

¹⁰ *Id.* at Chapter 2.810.13e.

¹¹ *See James A. Gray*, 54 ECAB 277 (2002).

¹² *See Q.V.*, Docket No. 21-1188 (issued May 26, 2022).

received the letter to visit the doctor referred by OWCP. She noted that she notified OWCP and also had her doctor send a letter. Appellant also submitted medical evidence, but this evidence does not establish good cause for failing to attend the scheduled appointment. While these documents were received within 14 days of the proposed notification of suspension, they do not constitute good cause for refusing to attend the appointment scheduled for December 21, 2021.¹³ Therefore, the Board finds that appellant has not established good cause for failing to appear for the scheduled examination on December 21, 2021.

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 January 5, 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 January 20, 2022.¹⁴

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 January 20, 2022, due to her failure to attend a scheduled medical examination.

¹³ See *A.H.*, Docket No. 21-0688 (issued October 6, 2021); see also *R.C.*, Docket No. 09-2328 (issued July 12, 2010).

¹⁴ See *R.T.*, Docket No. 20-0933 (issued July 29, 2022); *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 February 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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