

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

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<b>R.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-1008</b>
	)	<b>Issued: January 4, 2024</b>
<b>DEPARTMENT OF AGRICULTURE,</b>	)	
<b>KLAMATH NATIONAL FOREST, Eureka, CA,</b>	)	
<b>Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 24, 2023 appellant filed a timely appeal from a March 7, 2023 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 March 7, 2023 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, effective March 7, 2023, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

## FACTUAL HISTORY

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On December 30, 1991 appellant, then a 47-year-old temporary survey technician, filed a notice of traumatic injury (Form CA-1) alleging that on December 13, 1991 he injured his back when he twisted to reach out for an object while in the performance of duty. OWCP accepted the claim for lumbar strain, a herniated disc at L4-5, and permanent aggravation of underlying degenerative disc disease. Appellant stopped work and returned to modified duties on July 20, 1992. He continued to work modified duties until his employment was terminated on January 9, 1993, due to a lack of funds. Subsequently, appellant did not return to work. The record reflects appellant's receipt of wage-loss compensation on the periodic rolls as of June 16, 2002.

OWCP last received medical evidence from appellant's treating physician in 2015.

By letter dated September 8, 2022, OWCP notified appellant that he was being referred for a second opinion examination on October 7, 2022, with Dr. James R. Schwartz, a general surgeon, to assess the extent of his accepted employment injury, residuals of the accepted injury, and treatment recommendations. It advised him to confirm the time of the appointment and directions. OWCP also advised appellant of his responsibility to attend the appointment and that, if he failed to do so, his compensation benefits could be suspended in accordance with 5 U.S.C. § 8123(d). Further, it advised appellant that if he was unavoidably prevented from keeping his appointment, he should call OWCP and his request to reschedule would be reviewed. Only legitimate, documented emergencies would be deemed adequate grounds for not keeping the appointment.

In a letter dated September 26, 2022, appellant notified OWCP that his accepted injury prevented him from attending the appointment in Medford, Oregon due to inability to sit for the length of time required to travel, pursuant to restrictions from a prior OWCP second opinion physician. He requested that the second opinion evaluation be scheduled with a provider closer to his location in Arcata, California.

In a memorandum of telephone call (Form CA-110) with an OWCP claims examiner on October 5, 2022, appellant stated that he was able to travel for only 15 to 20 minutes at maximum to attend a medical appointment. The claims examiner advised him that OWCP would attempt to find a second opinion physician as close as possible, but that there were not many options close to appellant's location. The claims examiner further notified appellant that the second opinion

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<sup>3</sup> Docket No. 99-35 (issued July 14, 2000).

evaluation was necessary as his medical status had not been updated in over five years and that he would face sanctions if he did not cooperate with the scheduled medical examination.

On October 11, 2022 OWCP learned that appellant had not kept his scheduled appointment on October 7, 2022 with Dr. Schwartz.

In an internal OWCP e-mail dated October 11, 2022, the same OWCP claims examiner noted that appellant was unwilling to drive four hours to attend the appointment with Dr. Schwartz due to back pain with prolonged sitting. The claims examiner requested that the second opinion examination be rescheduled, and transportation be provided so that appellant could stop along the way to stretch every 15 to 20 minutes.

In an internal OWCP e-mail dated November 7, 2022, a medical case administrator informed OWCP's claims examiner that she had called appellant to offer an appointment with Dr. Schwartz on November 18, 2022, in Redding, California, but that appellant refused, stating that his back injury would prevent him from traveling to the appointment. The medical case administrator noted that there was no closer provider and that appellant had refused an extension of the date until December 2022. She further noted that the distance from appellant's home to Redding, California was 138 miles and that OWCP had "just approved the travel request today."

In a notice dated February 21, 2023, OWCP advised appellant that it proposed to suspend his wage-loss compensation and medical benefits as he failed to attend the medical examination scheduled for October 7, 2022. It noted that QTC Medical Services had attempted to reschedule an appointment on November 7, 2022, and offered transportation, but he had declined this new date of November 7, 2022, as well as an extended date in December 2022. OWCP afforded appellant 14 days to respond in writing with an acceptable reason as to why he did not attend the scheduled examination with Dr. Schwartz. It advised that if good cause was not established, his compensation benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until he attended and fully cooperated with the examination. OWCP instructed appellant to contact it immediately if he intended to report to a rescheduled examination with Dr. Schwartz. It afforded appellant 14 days to respond. Appellant did not respond.

By decision dated March 7, 2023, OWCP suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), effective on that date, finding that he failed to attend the scheduled medical examination with Dr. Schwartz on October 7, 2022, and had not provided written evidence justifying his failure to attend or cooperate with the examination. It noted that on October 3, 2022 it received his letter dated September 26, 2022 indicating that he could not drive to Medford, Oregon due to the length of time required to sit. On October 7, 2022 QTC contacted appellant to reschedule the second opinion evaluation and offered transportation to Redding, California, which was within 138 miles of his residence, however, appellant verbally declined the new date of November 18, 2022 as well as an extended date in December 2022.

## LEGAL PRECEDENT

Section 8123(a) 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>4</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>5</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>6</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 stops.<sup>7</sup> OWCP's procedures further 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>8</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 (5 U.S.C. § 8123(d)) until the date on which the claimant agrees to attend the examination.

## ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective March 7, 2023, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

In a letter dated September 8, 2022, OWCP notified appellant that he was being referred for a second opinion examination on October 7, 2022 with Dr. Schwartz to assess the extent of his accepted injury, residuals of the accepted injury, and treatment recommendations. It informed him of his obligations to attend and cooperate with the examinations. The notice clearly explained that appellant's compensation benefits would be suspended for failure to report to or for obstruction of the examination. The notice further informed appellant that only legitimate, documented emergencies would be deemed adequate grounds for not keeping the appointment. The letter also contained the date, time, and location of his appointment. Appellant did not appear for the appointment.

In a letter dated September 26, 2022, appellant notified OWCP that his accepted injury prevented him from attending the appointment in Medford, Oregon due to inability to sit for the length of time required to travel, pursuant to prior restrictions from a prior OWCP second opinion

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<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> *R.L.*, Docket No. 20-0160 (issued October 30, 2020). *See also M.T.*, Docket No. 18-1675 (issued March 8, 2019); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

<sup>6</sup> 20 C.F.R. § 10.320; 5 U.S.C. § 8123(a); *id.* at § 10.323; *A.P.*, Docket No. 19-0328 (issued August 6, 2019); *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

<sup>7</sup> 5 U.S.C. § 8123(d); *id.* at § 10.323; *A.P.*, *id.*; *D.K.*, *id.*

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010); *R.L.*, *supra* note 4.

physician. He requested that the second opinion evaluation be scheduled with a provider closer to his location in Arcata, California. In an internal OWCP e-mail dated October 11, 2022, the same OWCP claims examiner noted that appellant was unwilling to drive four hours to attend the appointment with Dr. Schwartz due to back pain with prolonged sitting. The claims examiner requested that the second opinion examination be rescheduled, and transportation be provided so that appellant could stop along the way to stretch every 15 to 20 minutes. Thereafter, on November 7, 2022, a medical case administrator informed OWCP that she had called appellant to offer an appointment with Dr. Schwartz, on November 18, 2022, in Redding, California, and approved the travel request, but that appellant refused, stating that his back injury would prevent him from traveling to the appointment. The medical case administrator noted that there was no closer provider and that appellant had refused an extension of the date until December 2022. In a letter dated February 21, 2023, OWCP provided appellant 14 days to submit a valid written reason for his failure to attend the scheduled medical appointment. No response was received. The Board has previously explained that distance alone is an insufficient reason to explain a failure to attend a medical evaluation.

The Board thus finds that appellant has not established good cause for failing to appear for the scheduled examination on October 7, 2022. OWCP properly determined that he failed to attend a scheduled medical examination without good cause and suspended his wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective March 7, 2023, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2024  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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