

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's compensation benefits effective May 7, 2024, pursuant 5 U.S.C. § 8123(d), due to her failure to attend a scheduled medical examination; and (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective November 5, 2024, based on her refusal of an offer of a temporary limited-duty assignment, pursuant to 20 C.F.R. § 10.500(a).

FACTUAL HISTORY

This case has previously been before the Board.³ 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 November 3, 2020, appellant, then a 41-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that, on October 30, 2020, she sprained her right arm when she caught her computer monitor as it slid off of her worktable while in the performance of duty. She stopped work on October 30, 2020. On July 11, 2022, OWCP accepted the claim for right shoulder rotator cuff strain of the muscles and tendons. An initial payment memorandum indicated that appellant was paid wage-loss compensation from October 31, 2020 to July 21, 2022. The record reflects that appellant was paid wage-loss compensation on the periodic rolls as of August 22, 2022.

In a letter dated March 8, 2024, OWCP, through its medical scheduling service, notified appellant that it had scheduled an April 18, 2024 second opinion examination with Dr. Frank Corrigan, a Board-certified orthopedic surgeon, regarding her continuing disability and medical residuals due to the accepted October 30, 2020 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 a letter dated April 19, 2024, OWCP's medical scheduling service informed OWCP that appellant did not attend the scheduled examination.

In a letter dated April 22, 2024, OWCP proposed to suspend appellant's compensation due to her failure to appear for the April 18, 2024 appointment with Dr. Corrigan. It advised 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. OWCP instructed appellant to contact it immediately if she intended to report to a rescheduled examination with Dr. Corrigan. It afforded her 14 days to respond.

³ Docket No. 21-0988 (issued June 2, 2022).

On April 22, 2024, appellant notified OWCP that she was unaware that she had missed an examination and requested that OWCP reschedule the examination and call her to let her know the date.

On May 3, 2024, appellant informed OWCP that she had not received a letter scheduling another examination.

By decision dated May 7, 2024, OWCP suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), effective that date, finding that she failed to attend the scheduled medical examination, and had not provided written evidence justifying her failure to attend. It explained that appellant's benefits would be reinstated only after verification that she attended and fully cooperated with the examination.

On May 9, 2024, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 6, 2024.

On June 7, 2024, OWCP referred appellant, along with the case record, a SOAF, and a series of questions to Dr. Corrigan, for a second opinion examination on August 15, 2024.

In an August 15, 2024 report, Dr. Corrigan recounted appellant's history of injury and medical treatment. He noted her complaints of pain in the right shoulder which included tenderness to light touch and pain which increased with movement, numbness and tingling down the arm into the hand. Dr. Corrigan noted that he was provided the magnetic resonance imaging (MRI) scan report dated November 6, 2020; but that he was not provided with the actual imaging study for his review, and that if it was made available, he would review it and provide an addendum to his report. He related that appellant had no instability of the right shoulder; strength on forward flexion, internal rotation, and external rotation, as well as sensory, motor and reflex testing were within normal limits. However, appellant had limited abduction, adduction, forward flexion and extension of the right shoulder. Dr. Corrigan noted that his objective findings for appellant's right shoulder continued to be consistent with adhesive capsulitis since she exhibited limited range of motion in every plane. He explained that no further diagnostic testing was performed; however, he reviewed the MRI scan report as described above. Dr. Corrigan diagnosed right shoulder sprain with rotator cuff tear, unresolved and adhesive capsulitis right shoulder, unresolved. He opined that the right rotator cuff tear reported to have been seen on the MRI scan was the direct result of appellant's October 30, 2020 injury. Dr. Corrigan further noted that he found no evidence of plexopathy, complex regional pain syndrome, cervical sprain and/or cervical radiculopathy. With regard to the right carpal tunnel syndrome (CTS), he related that the diagnosis of CTS was not causally related to the October 30, 2020 incident, based on the described mechanism of injury. Dr. Corrigan concluded that appellant's work-related condition had not resolved, she continued to have global stiffness of the right shoulder consistent with adhesive capsulitis and since she had not yet had any surgical treatment, she continued to have the tear of the rotator cuff as seen on the November 6, 2020 MRI scan of the right shoulder. He advised that appellant needed aggressive physical therapy for the right shoulder to improve range of motion prior to proceeding with surgical intervention for the tear of the rotator cuff. Dr. Corrigan opined that maximum medical improvement (MMI) had not been achieved and that appellant could not return to her date-of-injury job but a temporary sedentary-duty position was reasonable. He completed a work capacity evaluation (Form OWCP-5c), which indicated that she was unable to perform her usual job without

restrictions. Dr. Corrigan further indicated that appellant was capable of working eight hours per day with physical restrictions, sedentary duty only. However, he did not note any specific physical restrictions.

On August 23, 2024, the employing establishment offered appellant a temporary sedentary-duty position for eight hours per day, with a return-to-work date of September 9, 2024. The position description cover sheet indicated that the position was as a Workers' Compensation Claims Examiner. A position description for a GS-12 Workers' Compensation Claims Examiner was attached. The physical demands were noted as work performed using books, telephone, and computer and electronic case files at a desk and at meetings, and infrequent travel for possible program wide meetings, conferences, or trainings. Actual physical requirements of the position, *i.e.*, lifting, gripping, manipulating, work above the shoulder were not listed.

On September 10, 2024, the employing establishment noted that appellant did not respond to the offer.

OWCP reinstated appellant's periodic rolls wage-loss compensation effective August 15, 2024, the date of her second opinion evaluation.

In a notice dated September 24, 2024, OWCP proposed to terminate appellant's wage-loss compensation. It advised her that it had reviewed the work restrictions provided by Dr. Corrigan and determined that the temporary position the employing establishment offered on August 15, 2024, was within her work restrictions. OWCP informed appellant of the provisions of 20 C.F.R. § 10.500(a) and advised her that her entitlement to wage-loss compensation would be "terminated indefinitely" if she did not accept the job offered or provide a written explanation with justification for her refusal within 30 days.

In a letter dated October 1, 2024, counsel for appellant argued that the job description appellant received was basically her regular job and not a modified job.

In an October 9, 2024 report, Dr. Sheref F. Hassan, a Board-certified orthopedic surgeon, noted that appellant was seen for right shoulder pain. He diagnosed strain of muscles and tendons of the rotator cuff of the right shoulder, subsequent encounter; impingement syndrome of right shoulder; bursitis of right shoulder; and adhesive capsulitis of the right shoulder. Dr. Hassan noted that he was in disagreement with the decision to return appellant to work as she was totally disabled.

On October 4, 2024, appellant contended that the job offer was in conflict with the second opinion report, as it indicated that she could not perform her regular duties.

By decision dated November 5, 2024, the OWCP hearing representative affirmed the May 7, 2024 decision.

In a separate decision also dated November 5, 2024, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 20 C.F.R. § 10.500(a). It noted that she had not accepted the August 23, 2024 temporary light-duty position which was within the work restrictions provided by Dr. Corrigan.

LEGAL PRECEDENT -- ISSUE 1

Section 8123(d) 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.⁴ 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.⁵ 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.⁶ 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.⁷ 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.⁸ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly suspended appellant's compensation benefits, pursuant to 5 U.S.C. § 8123(d), effective May 7, 2024, due to her failure to attend a scheduled medical examination.

In a letter dated March 8, 2024, QTC, OWCP's medical scheduler, notified appellant that she was being referred for a second opinion examination on April 18, 2024 with Dr. Corrigan regarding her continuing disability and medical residuals due to the accepted October 30, 2020 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.

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.¹⁰ The

⁴ *Id.* at § 8123(d).

⁵ *See A.P.*, Docket No. 22-0709 (issued November 25, 2024); *T.A.*, Docket No. 21-0528 (issued December 14, 2021); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

⁶ 20 C.F.R. § 10.320. *See also K.B.*, Docket No. 18-1593 (issued April 16, 2019).

⁷ *See* 5 U.S.C. § 8123. *Id.* at § 10.323; *A.P.*, Docket No. 19-0328 (issued August 6, 2019); *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

⁹ *Id.* at Chapter 2.810.13e.

¹⁰ *See James A. Gray*, 54 ECAB 277 (2002).

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 April 18, 2024 appointment.¹¹

In its April 22, 2024 notice, OWCP provided appellant 14 days to submit a valid reason for her failure to attend the scheduled medical appointment on April 18 2024. In an undated statement, received on April 22, 2024, appellant alleged that she was unaware of the scheduled examination. She requested that OWCP reschedule the examination and call her to advise of the date. While this document was received within 14 days of the proposed notification of suspension, it did not constitute good cause for refusing to attend the appointment scheduled for April 18, 2024. Appellant did not offer any evidence to rebut the presumption that she had received notice of the medical appointment.¹² Therefore, the Board finds that appellant has not established good cause for failing to appear for the scheduled examination on April 18, 2024.

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 April 22, 2024 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 May 7, 2024.¹³

LEGAL PRECEDENT -- ISSUE 2

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.¹⁴

Section 10.500(a) of the Code of Federal Regulations provides:

“(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing establishment had offered, in accordance with

¹¹ See *Q.V.*, Docket No. 21-1188 (issued May 26, 2022).

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

¹³ *S.L.*, Docket No. 23-0887 (issued January 17, 2024).

¹⁴ See *L.C.*, Docket No. 25-0082 (issued December 26, 2024); *S.V.*, Docket No. 17-1268 (issued March 23, 2018); *I.J.*, 59 ECAB 408 (2008).

OWCP procedures, a temporary light-duty assignment within the employee's work restrictions. (The penalty provision of 5 U.S.C. § 8106(c)(2) will not be imposed on such assignments under this paragraph.)"¹⁵

OWCP's procedures also provide that if the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions is available, and the employee was notified in writing that such light duty was available, then wage-loss benefits are not payable for the duration of light-duty availability, since such benefits are payable only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.¹⁶ The claims examiner must provide a pretermination notice if the claimant is being removed from the periodic rolls.¹⁷ When a temporary light-duty assignment either ends or is no longer available, the claimant is entitled to compensation and should be returned to the periodic rolls immediately as long as medical evidence supports any disabling residuals of the work-related condition.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective November 5, 2024.

OWCP based its termination of benefits on the August 15, 2024 report from Dr. Corrigan, the second opinion physician. Dr. Corrigan diagnosed right shoulder sprain with rotator cuff tear, unresolved and adhesive capsulitis right shoulder, unresolved. He also opined that the right rotator cuff tear reported to have been seen on MRI scan was the direct result of the October 30, 2020 injury. Dr. Corrigan opined that appellant could perform sedentary work for eight hours per day with restrictions; however, he did not identify any specific physical restrictions. OWCP did not seek clarification from Dr. Corrigan regarding appellant's work capacity. The Board therefore finds that the report of the second opinion physician was insufficient to carry the weight of the medical evidence and justify termination of appellant's wage-loss compensation.

Having undertaken development of the record, OWCP must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁹ The Board thus finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective November 5, 2024.

¹⁵ 20 C.F.R. § 10.500(a).

¹⁶ *Supra* note 8 at Chapter 2.814.9c(1)(a) (June 2013).

¹⁷ *Id.* at Chapter 2.814.9c(1)(b).

¹⁸ *Id.* at Chapter 2.814.9c(1)(d).

¹⁹ *See J.S.*, Docket No. 17-0804 (issued August 10, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d), effective May 7, 2024, due to her failure to attend a scheduled medical examination. The Board further finds that OWCP failed to meet its burden of proof to terminate her wage-loss compensation, effective November 5, 2024.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2024 decision of the Office of Workers' Compensation Programs which suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), effective on that date, is affirmed. The Board further finds that the November 5, 2024 decision of the Office of Workers' Compensation Programs which terminated appellant's wage-loss compensation, effective that date, is reversed.

Issued: February 6, 2025
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