

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 July 22, 2024, due to his failure to attend a scheduled medical examination.

FACTUAL HISTORY

This case has previously been before the Board on different issues.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 12, 2007 appellant, then a 52-year-old passport clerk, filed a traumatic injury claim (Form CA-1) alleging that the repetitive motions of reaching and bending while processing passports on February 6, 2007 aggravated his right shoulder.⁴ OWCP accepted the present claim for right shoulder calcifying tendinitis and injury to right median nerve. Appellant stopped work on April 9, 2007 and has not returned. OWCP paid him wage-loss compensation on the periodic rolls commencing May 13, 2007.

OWCP subsequently found a conflict in the medical opinion evidence regarding appellant's continuing disability and medical residuals due to the accepted February 6, 2007 employment injury. In a January 17, 2024 letter, it notified appellant that it had scheduled a March 15, 2024 impartial medical examination with Dr. Kurt Piatkowski, an osteopath Board-certified in orthopedic surgery, serving as the impartial medical examiner (IME) to resolve the conflict in medical opinion evidence. The letter informed appellant 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, pursuant to 5 U.S.C. § 8123(d). The letter, which provided the scheduled date, time, and location of his appointment, was mailed to his last known address of record. Appellant did not request participation in the selection of the IME.

In an e-mail sent March 18, 2024, a representative from OWCP's scheduling service, notified OWCP that appellant did not attend the examination scheduled for March 15, 2024.

In a notice dated June 21, 2024, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as he failed to attend the medical examination scheduled for March 15, 2024. It afforded him 14 days to respond in writing with an explanation as to why he did not attend the examination with Dr. Piatkowski. OWCP advised appellant 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. It instructed him to contact OWCP immediately if he intended to report to a rescheduled examination with Dr. Piatkowski.

³ Docket No. 18-1376 (issued March 27, 2019).

⁴ OWCP assigned this claim OWCP File No. xxxxxx682. Under OWCP File No. xxxxxx288, it accepted that on July 29, 1992 appellant sustained right shoulder tendinitis. Under OWCP File No. xxxxxx375, OWCP accepted a right shoulder calcifying tendinitis condition. It administratively combined OWCP File Nos. xxxxxx682, xxxxxx288, and xxxxxx375, with File No. xxxxxx288 serving as the master file.

On July 3, 2024 appellant contested the selection of Dr. Piatkowski as the IME. He argued that the IME selection was improper as he did not participate in the selection process.

By decision dated July 22, 2024, 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 March 15, 2024. It found that his concerns were unfounded and there was no evidence to establish good cause for his nonattendance/obstruction of the scheduled examination. OWCP noted that appellant's wage-loss compensation and medical benefits may be reinstated only after verification that he had complied with the IME examination.

On August 28, 2024 appellant requested reconsideration. He again contested the selection of Dr. Piatkowski as the IME.

By decision dated September 16, 2024, OWCP denied modification of the July 22, 2024 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 established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.¹⁰

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).

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.

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 July 22, 2024, due to his failure to attend a scheduled medical examination.

On January 17, 2024, OWCP notified appellant that it had scheduled a March 15, 2024 impartial medical examination with Dr. Piatkowski. It explained that his entitlement to compensation could be suspended, pursuant to 5 U.S.C. § 8123(d), if he refused to submit to or obstructed an examination. Appellant did not appear for the March 15, 2024 appointment, nor did he attempt to reschedule the appointment prior to the designated time.¹¹ In a notice dated June 21, 2024, OWCP provided him 14 days to submit a valid reason in writing for his failure to attend the scheduled medical appointment. On July 3, 2024 appellant contested the selection of Dr. Piatkowski as the IME. For the first time, he argued that the IME selection was improper as he did not participate in the selection process.

The Board has held that a claimant does not possess an unqualified right to participate in the selection of an IME; rather, he/she must provide a valid reason for a request for participation at the time the conflict in medical opinion is found, not after the scheduled examination date.¹²

As the case record establishes that appellant did not indicate his desire to participate in the IME selection process at the time the conflict in medical opinion was found, the Board finds that he has not established good cause for failing to appear for the scheduled examination on March 15, 2024. Thus, OWCP properly suspended appellant's wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d), effective July 22, 2024.¹³

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 July 22, 2024, due to his failure to attend a scheduled medical examination.

¹¹ See *G.B.*, Docket No. 23-0302 (issued August 9, 2023); *R.T.*, Docket No. 20-0933 (issued July 29, 2022).

¹² *Terrance R. Stath*, 45 ECAB 412 (1994); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.4 (July 2011).

¹³ See *S.L.*, Docket No. 23-0887 (issued January 17, 2024); *R.T.*, *supra* note 11; *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 July 22 and September 16, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 22, 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