

² The Board notes that, following the September 20, 2024 decision, appellant submitted additional evidence on appeal to the Board. However, the Board’s *Rules of Procedures* 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 September 20, 2024, 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.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 November 4, 1988 appellant, then a 28-year-old temporary food service worker, filed a traumatic injury claim (Form CA-1) alleging that on October 25, 1988 he sustained injuries to his back, shoulders, neck, legs, and right foot when he lifted a bundle of rags off a top shelf while in the performance of duty. He stopped work on November 4, 1988, and received continuation of pay through December 18, 1988. OWCP accepted appellant's claim for lumbar sprain and lumbar intervertebral disc displacement without myelopathy. It paid him wage-loss compensation on the supplemental rolls, effective December 17, 1989.

By decision dated January 19, 1993, OWCP reduced appellant's wage-loss compensation to zero, effective February 7, 1993, based on his capacity to earn wages as a fast-food worker.

On October 30, 2003 appellant underwent OWCP-authorized lumbar surgery. It paid him wage-loss compensation on the supplemental rolls, effective October 30, 2003, and on periodic rolls effective January 25, 2004.

In a letter dated May 17, 2024, OWCP's scheduling service, notified appellant that it had scheduled an August 22, 2024 second opinion examination for him with Dr. Michael Lagrone, a Board-certified orthopedic surgeon. It explained that his entitlement to wage-loss compensation and medical 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 appellant's appointment and OWCP mailed it to his last known address of record.

By letter dated August 22, 2024, OWCP's scheduling service notified OWCP that appellant failed to attend the August 22, 2024 appointment with Dr. Lagrone.

In a notice dated August 26, 2024, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as he failed to attend the medical examination scheduled for August 22, 2024. It afforded him 14 days to respond in writing with an explanation as to why he failed to attend the examination with Dr. Lagrone. OWCP advised that, if good cause was not established, appellant's compensation and medical benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until he attended and fully cooperated with the examination. It instructed him

³ Docket No. 19-0065 (issued May 14, 2019).

to contact OWCP immediately if he intended to report to a rescheduled examination with Dr. Lagrone. No response was received.

By decision dated September 20, 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 August 22, 2024.

LEGAL PRECEDENT

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 until the date on which the claimant agrees to attend the examination.⁹

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 September 20, 2024, due to his failure to attend a scheduled medical examination.

In a May 17, 2024 letter, OWCP's scheduling service notified appellant that he was being referred for a second opinion medical examination on August 22, 2024 with Dr. Lagrone. The letter informed him of his obligations to attend and cooperate with the examination and explained that his compensation benefits would be suspended, pursuant to 5 U.S.C. § 8123(d), for failure to report to or for obstruction of the examination. The letter also contained the date, time, and

⁴ 5 U.S.C. § 8123(d).

⁵ See *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.

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 (February 2022).

⁹ *Id.* at Chapter 2.810.13e.

location of appellant's appointment. OWCP mailed the letter to appellant's last known address of record.

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 May 17, 2024 letter was sent by OWCP to appellant's last known address of record and is presumed to have been received by him absent any notice of nondelivery. Appellant has not submitted evidence to rebut this presumption.¹¹

Appellant did not appear for the August 22, 2024 appointment, nor did he attempt to reschedule the appointment prior to the designated time. In a notice dated August 26, 2024, OWCP provided him 14 days to submit a valid reason in writing for his failure to attend the scheduled medical appointment. Appellant did not respond.

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 August 26, 2024 notice of proposed suspension, the Board finds that OWCP properly suspended his wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d), effective September 20, 2024.¹²

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective September 20, 2024, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

¹⁰ See *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *James A. Gray*, 54 ECAB 277 (2002); *Claudia J. Whitten*, 52 ECAB 483 (2001).

¹¹ *D.C.*, Docket No. 23-0217 (issued June 6, 2023).

¹² 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 September 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 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