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<b>C.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0652</b>
	)	<b>Issued: July 25, 2025</b>
<b>DEPARTMENT OF COMMERCE,</b>	)	
<b>U.S. CENSUS BUREAU, Tampa, FL, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. 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 May 20, 2025, due to her failure to attend a scheduled medical examination.

## **FACTUAL HISTORY**

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

On August 2, 2010 appellant, then a 58-year-old census enumerator, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2010 she sustained bruising to both knees when she tripped and fell while in the performance of duty. She stopped work on July 14, 2010. OWCP accepted appellant's claim for sprains of the neck, lumbar spine, and lateral collateral ligaments of both knees. It subsequently expanded the acceptance of her claim to include bilateral internal knee derangement, left knee medial meniscus tear, and left knee Baker's cyst. OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls, effective October 25, 2010, and on the periodic rolls, effective July 3, 2011. Appellant underwent OWCP-authorized left knee arthroscopic surgery on December 28, 2011, and right knee arthroscopic surgery on November 6, 2013.

By decision dated June 27, 2023, OWCP suspended appellant's wage-loss compensation, effective June 18, 2023, due to her failure to submit a Form EN-1032 as requested. By decision dated July 17, 2023, it terminated her wage-loss compensation and entitlement to schedule award compensation, effective July 17, 2023, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). Appellant appealed OWCP's June 27 and July 17, 2023 decisions to the Board. By decision dated August 27, 2024,<sup>4</sup> the Board affirmed the June 27, 2023 suspension decision and reversed the July 17, 2023 termination decision. OWCP later reinstated appellant's compensation payments.

In an April 15, 2025 letter, OWCP, through its medical scheduling service, notified appellant that she was being referred for a second opinion examination on May 1, 2025 with Dr. Kevin L. Scott, a Board-certified orthopedic surgeon, to determine the status of her accepted employment-related conditions. 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 appellant's examination appointment.

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<sup>3</sup> Docket No. 13-36 (issued April 9, 2013); Docket No. 21-0171 (issued November 29, 2021); Docket No. 24-0210 (issued August 27, 2024).

<sup>4</sup> Docket No. 24-0210 (issued August 27, 2024).

On May 1, 2025 OWCP received a letter from OWCP's scheduling service, advising that appellant did not appear for the medical examination scheduled with Dr. Scott on that date.

In a notice of proposed suspension dated May 2, 2025, OWCP afforded appellant 14 days to provide good cause for her failure to attend the medical examination scheduled for May 1, 2025. It advised her that it would suspend her wage-loss compensation and medical benefits if she did not provide good cause for her non-attendance within the afforded period.

In a memorandum of telephone call (Form CA-110) dated May 2, 2025, OWCP indicated that appellant advised that she was living in a hotel and had "just received today" the April 15, 2025 letter advising her of the medical examination scheduled for May 1, 2025. It noted that it informed her that she needed to submit a statement as to why she did not attend the scheduled examination.

By decision dated May 20, 2025, OWCP suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective that same date, due to her failure to attend a 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.

### **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.<sup>5</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>6</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>7</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 ceases.<sup>8</sup> 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.<sup>9</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.<sup>10</sup>

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<sup>5</sup> 5 U.S.C. § 8123.

<sup>6</sup> *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

<sup>7</sup> 20 C.F.R. § 10.320.

<sup>8</sup> 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323; *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

<sup>10</sup> *Id.* at Chapter 2.810.13e.

### ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation pursuant to 5 U.S.C. § 8123(d), effective May 20, 2025, due to her failure to attend a scheduled medical examination.

In an April 15, 2025 letter, OWCP notified appellant that she was being referred for a second opinion examination on May 1, 2025 with Dr. Scott to determine the status of her accepted employment-related conditions. The letter informed appellant of her obligation 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 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.<sup>11</sup> OWCP sent the April 15, 2025 letter advising appellant of the May 1, 2025 examination appointment to her address of record and it is presumed to have been received by her, absent any notice of nondelivery. In a May 2, 2025 telephone call to OWCP, appellant asserted that she did not receive the April 15, 2025 letter advising her of the May 1, 2025 examination appointment until May 2, 2025. However, she did not submit evidence to support her assertion of late delivery of the April 15, 2025 letter or otherwise rebut the presumption of delivery of the letter in the ordinary course of business under the mailbox rule.<sup>12</sup> Appellant did not appear for the medical examination scheduled for May 1, 2025, nor did she attempt to reschedule the appointment prior to the designated time.

In a notice of proposed suspension dated May 2, 2025, OWCP afforded appellant 14 days to provide good cause for her failure to attend the May 1, 2025 examination appointment. As noted above, appellant did not submit evidence to support her assertion of late delivery of the April 15, 2025 letter advising her of the May 1, 2025 examination appointment or otherwise rebut the presumption of delivery of the letter in the ordinary course of business under the mailbox rule. It is further noted that she did not submit a written response to the May 2, 2025 notice of proposed suspension, which afforded her 14 days to provide good cause for her failure to attend the scheduled medical appointment.

As appellant did not attend the May 1, 2025 examination as scheduled and failed to provide good cause for failing to appear within 14 days of OWCP's May 2, 2025 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 20, 2025.<sup>13</sup>

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<sup>11</sup> See *R.D.*, Docket No. 20-1551 (issued November 8, 2021); *James A. Gray*, 54 ECAB 277 (2002).

<sup>12</sup> See *id.*

<sup>13</sup> See *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

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 pursuant to 5 U.S.C. § 8123(d), effective May 20, 2025, due to her failure to attend a scheduled medical examination.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 20, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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