

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

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**J.W., Appellant**

**and**

**U.S. POSTAL SERVICE, PORTLAND MAINE  
SORTING & DELIVERY CENTER,  
Portland, ME, Employer**

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) **Docket No. 25-0900**  
) **Issued: January 15, 2026**  
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 22, 2025 appellant filed a timely appeal from a June 25, 2025 merit decision and a September 18, 2025 nonmerit 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>

**ISSUES**

The issues are: (1) whether OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective June 25, 2025, pursuant to 5 U.S.C. § 8123(d), due to her failure to attend a scheduled medical examination; and (2) whether OWCP properly denied

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 18, 2025 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.*

appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

### **FACTUAL HISTORY**

On January 23, 2020 appellant, then a 60-year-old rural carrier associate, filed a notice of traumatic injury (Form CA-1) alleging that on January 8, 2020 she injured her right hip, back, knee, shoulder, and leg when she slipped and fell onto her right side while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for sprains of the lumbar spine and right hip, and aggravation of lumbar degenerative disc disease and spondylosis. It paid appellant wage-loss compensation on the supplemental rolls effective February 23, 2020, and on the periodic rolls effective June 21, 2020.

Appellant underwent OWCP-authorized surgery on June 27, 2022 including decompression and fusion with instrumentation at L4-5 by Dr. Nevan Baldwin, a Board-certified orthopedic surgeon. She thereafter came under the care of Dr. Diana Pascu, a Board-certified internist, and Dr. Jung-Woo Ma, a Board-certified physiatrist and pain medicine specialist.

By letter dated February 7, 2025, OWCP notified appellant that she was being referred for a second opinion examination on March 7, 2025, in Brookline, Massachusetts with Dr. Hyman Glick, an orthopedic surgeon, to assess the extent of her accepted employment injury, residuals of the accepted injury, and treatment recommendations. It advised her to confirm the time of the appointment and directions. OWCP also advised appellant of her responsibility to attend the appointment and that, if she failed to do so, her compensation benefits could be suspended in accordance with 5 U.S.C. § 8123(d). Further, it advised her that if she was unavoidably prevented from keeping her appointment, she should call OWCP and her request to reschedule would be reviewed. OWCP added that only legitimate, documented emergencies would be deemed adequate grounds for not keeping the appointment.

In a medical report dated February 26, 2025, Dr. Ma noted appellant's complaints of low back pain with radiation down the right lateral thigh, which interfered with her daily activities such as prolonged walking, standing, and sitting. He documented physical examination findings and diagnosed lumbar spondylosis, radiculopathy, and disc displacement. In a work restriction form of even date, Dr. Ma indicated that appellant was totally disabled from work.

On February 28, 2025 appellant notified OWCP that her medical conditions prevented her from attending the appointment in Brookline, Massachusetts claiming that she could not sit for that long. She requested that the appointment be scheduled closer to her location in Manchester, New Hampshire.

By letter dated March 3, 2025, OWCP rescheduled the second opinion evaluation with Dr. Glick to April 7, 2025 at the same location in Brookline, Massachusetts.

On March 17, 2025 appellant indicated that she was aware of the new date for the appointment with Dr. Glick on April 7, 2025 but that the location had not changed. She indicated that Brookline, Massachusetts was a two- and one-half-hour drive and requested that the examination be scheduled closer to her home in New Hampshire. On March 19, 2025 OWCP confirmed that appellant had submitted a request for a closer appointment, if possible.

In internal e-mail correspondence dated March 19, 2025, OWCP advised a QTC Medical Services medical case administrator that appellant had inquired if her appointment could be moved to a closer location. The medical case administrator responded that “this is the closest examiner at 54 miles one way willing to do this type of exam.”

On April 3, 2025 appellant reiterated that she was unable to travel two- and one-half hours from her home for the appointment on April 7, 2025 due to an inability to sit in a car for long periods of time. On April 9, 2025 OWCP advised appellant that it would follow up once the appointment was rescheduled.

By letter dated June 3, 2025, QTC notified OWCP that appellant had not attended the appointment on April 7, 2025 with Dr. Glick.

In a notice dated June 5, 2025, OWCP advised appellant that it proposed to suspend her wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for April 7, 2025. It noted that she had requested a closer location for the appointment, but that QTC advised that this was the closest provider available. OWCP also noted that the last medical restriction on file prior to appellant’s appointment did not list a sitting restriction of two and one-half hours; that an internet navigation site indicated that the location was one hour and eight minutes from her home; and that she was not required to drive 55 miles without breaks. It afforded her 14 days to respond in writing with an acceptable reason as to why she did not attend the scheduled examination with Dr. Glick. OWCP advised that if good cause was not established, appellant’s compensation benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until she attended and fully cooperated with the examination. It instructed her to contact it immediately if she intended to report to a rescheduled examination with Dr. Glick. OWCP afforded appellant 14 days to respond.

On June 17, 2025 OWCP referred appellant, along with the case record, a SOAF, and a series of questions to Dr. Andrew Jackson, an orthopedist, for a second opinion examination on July 17, 2025 in Woburn, Massachusetts which was closer to her home.

By decision dated June 25, 2025, 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 with Dr. Glick on April 7, 2025 and had not provided written evidence justifying her failure to attend or cooperate with the examination.

On August 21, 2025 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

By decision dated September 18, 2025, OWCP denied appellant’s request for a review of the written record, finding that the request was not made within 30 days of the June 25, 2025 decision and, therefore, was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

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>3</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>4</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>5</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>6</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>7</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 -- ISSUE 1**

The Board finds that OWCP improperly suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d).

OWCP notified appellant that she was being referred for a second opinion examination on April 7, 2025, with Dr. Glick in Brookline, Massachusetts. On February 28, March 19, and April 7, 2025, appellant notified OWCP that her medical conditions prevented her from attending the appointment in Brookline, Massachusetts due to an inability to sit for the length of time required to travel. She requested that the second opinion evaluation be scheduled with a provider closer to her home in Manchester, New Hampshire. On April 9, 2025 OWCP advised appellant that it would follow up once the appointment was rescheduled. By letter dated June 3, 2025, QTC notified OWCP that appellant had not attended the appointment on April 7, 2025 with Dr. Glick. Subsequently, on June 5, 2025, OWCP afforded appellant 14 days to respond in writing with an acceptable reason as to why she did not attend the scheduled examination with Dr. Glick. On June 17, 2025 it notified her that it had rescheduled the second opinion examination for July 17, 2025 to a closer location in Woburn, Massachusetts. However, on June 25, 2025 OWCP suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), effective that date as she failed to attend the scheduled medical examination with

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<sup>3</sup> 5 U.S.C. § 8123(a).

<sup>4</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>5</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>6</sup> 5 U.S.C. § 8123(d); *id.* at § 10.323; *A.P.*, *id.*; *D.K.*, *id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010); *R.L.*, *supra* note 4.

Dr. Glick on April 7, 2025, and had not provided written evidence justifying her failure to attend or cooperate with the examination.

As noted above, OWCP's procedures provide that 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> The evidence of record establishes that appellant requested a closer location for the examination and that OWCP advised her that it would notify her once the examination was rescheduled. By notice dated June 5, 2025, OWCP afforded appellant 14 days to respond with reasons why she did not attend the originally scheduled examination of April 7, 2025. On June 17, 2025 OWCP rescheduled an examination with Dr. Jackson for July 17, 2025. At the time of the rescheduling, the 14 days provided appellant to respond had not run out. By rescheduling the appointment, appellant would reasonably have believed that there was no need to respond to the June 5, 2025 letter.

OWCP may only invoke the sanction provision of 5 U.S.C. § 8123(d) if good cause for the refusal or obstruction is not established. As the record reflects that appellant was advised that the examination would be rescheduled and, during the 14-day period following OWCP's June 5, 2025 letter, OWCP in fact did reschedule the examination to a closer location, appellant has established good cause.<sup>9</sup> Therefore, the Board finds that OWCP abused its discretion in suspending her wage-loss compensation and medical benefits effective June 25, 2025.

### **CONCLUSION**

The Board finds that OWCP improperly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d).<sup>10</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> See generally *T.A.*, Docket No. 21-0582 (issued December 14, 2021) (An OWCP claims examiner advised appellant that the scheduled second opinion examination would not be necessary if appellant was released to full-duty work by his treating physician. Appellant then submitted proof that his treating physician released him to full-duty work. The Board found that appellant had established good cause for not attending the scheduled second opinion examination.

<sup>10</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2025 decision of the Office of Workers' Compensation Programs is reversed. The September 18, 2025 nonmerit decision is set aside as moot.

Issued: January 15, 2026  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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