

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD E. CHASE and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION, Yorktown, VA

*Docket No. 98-1698; Submitted on the Record;
Issued February 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation for refusing to submit to a medical examination that he was directed to undergo.

On February 18, 1997 appellant, then a 61-year-old firefighter, filed a claim alleging a hearing loss as a result of his federal employment. He submitted copies of audiograms and a list of his federal employment record.

In a letter dated August 13, 1997, the Office referred appellant for a second opinion evaluation with Dr. Peter Galantich, a Board-certified otolaryngologist. The Office scheduled the appointment for September 3, 1997 and informed appellant of the penalty of refusing to submit to the examination.

The Office was advised by Dr. Galantich's office on September 3, 1997 that appellant failed to keep the scheduled appointment. The Office called appellant on September 4, 1997 and left a message on his answering machine to inquire as to why the scheduled appointment was not kept.

By letter dated September 5, 1997, the Office provided appellant with the opportunity to present his reasons in writing for failing to keep the scheduled appointment. Appellant was informed that if no response and/or valid reason was received within 15 days from the date of this letter, his right to any future compensation would be suspended and his claim denied until the refusal and/or obstruction ceases. The Office received no response from appellant.

By decision dated October 7, 1997, the Office suspended appellant's entitlement to compensation until the refusal or obstruction stopped.

The Board finds that appellant's failure to keep the scheduled appointment constituted a refusal to submit, without good cause, to a medical examination that was reasonably required.¹

Section 8123(a) of the Federal Employees' Compensation Act provides:

"An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required."²

The Board has held that a time must be set for a medical examination and the employee must fail to appear for the appointment, without an acceptable excuse or reason, before the Office can suspend or deny the employee's entitlement to compensation on the grounds that the employee failed to submit to or obstructed a medical examination.³ In the present case, the time for the second opinion evaluation with Dr. Galantich was set, appellant was duly advised of the scheduled appointment and failed to appear for medical evaluation. The only remaining issue is whether appellant presented an acceptable excuse or reason for his failure to appear. In this regard, the Office's Federal (FECA) Procedure Manual provides:

"Failure to Appear. If the claimant does not report for a scheduled appointment, he or she should be asked in writing to provide an explanation within 14 days. If good cause is not established, entitlement to compensation should be suspended in accordance with 5 U.S.C. § 8123(d) until the claimant reports for examination."⁴

Following notice that appellant failed to appear for examination by Dr. Galantich, the Office, in a September 5, 1997 letter, allowed him 15 days to explain why he failed to keep the August 13, 1997 appointment, and advised him that if he did not respond or if his reasons were found unacceptable, his entitlement to compensation would be suspended until he agreed to submit to examination as directed. The Office did not receive any response from appellant.

¹ *Larry B. Guillory*, 45 ECAB 522 (1994).

² 5 U.S.C. § 8123(a).

³ *Margaret M. Gilmore*, 47 ECAB 718 (1996).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (April 1993).

The Board finds that the Office properly allowed appellant to submit in writing and duly considered that appellant did not set forth any reasons for the failure to keep the scheduled appointment on September 3, 1997.⁵

The October 7, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 22, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

⁵ Although the record reflects that the Office subsequently received a November 20, 1997 report from Dr. Galantich and a copy of an audiogram, this information was not before the Office at the time of its October 7, 1997 decision suspending appellant's entitlement to compensation and, thus, the Board has no jurisdiction to review it, *see* 20 C.F.R. § 501.2(c). Inasmuch as the Board is limited to reviewing the evidence in the case record which was before the Office and may not consider new evidence, the Board does not have jurisdiction to review the evidence and argument which appellant submitted on appeal.