

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE COBB and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 99-1434; Submitted on the Record;
Issued May 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation because she did not undergo a physical examination scheduled by the Office.

On April 30, 1986 appellant, then a 31-year-old mail carrier, filed a claim alleging that on that date she injured herself after falling down stairs during the course of her federal employment. The Office accepted appellant's case for a contusion and sprain of the low back and a cervical strain.

On September 22, 1987 appellant injured her back while lifting trays of mail. The Office accepted appellant's claim for muscle ligamentation and strain of spine.

On July 30, 1990 appellant sustained another work injury which was accepted for fracture of the right toe.

On October 2, 1998 the Office sent appellant a letter wherein it referred her to Dr. Alexander Ghanaian at Loyola Medical Center for a second opinion evaluation, to be held on October 16, 1998. The Office informed appellant that her cooperation was required, and that failure to provide an acceptable reason for not appearing would result in her benefits being suspended in accordance with section 8123(d) of the Federal Employees' Compensation Act.¹

The record reflects that appellant called the Office on October 15, 1998 stating that she just received notice on that date, and that she did not have enough notice to arrange for a babysitter so she could attend the appointment.

On October 22, 1998 the Office issued a notice of proposed suspension of compensation wherein it advised appellant that as she failed to attend the second opinion examination which

¹ 5 U.S.C. § 8123(d).

was scheduled to take place on October 16, 1998, she had 14 days to submit a written explanation as to why she did not attend, and that, if good cause was not established, her entitlement to compensation would be suspended in accordance with 5 U.S.C. § 8123(d) until she reported for the examination.

Appellant did not respond, and in a decision dated December 1, 1998, the proposed suspension was made final effective December 2, 1998.

The Board finds that the Office properly suspended appellant's compensation benefits on the grounds that she failed to attend a scheduled medical examination.

Section 8123(a) of the Act² authorizes the Office to require an employee who claims compensation for an employment injury to undergo such physical examinations as it deems necessary. 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 the Office.³ The only limitation on this authority is that of reasonableness.⁴ Section 8123(d) of the Act provides that, "[I]f an employee refuses to submit to or obstructs an examination, his right to compensation is suspended until refusal or obstruction stops."⁵ If an employee fails to appear for an examination, the Office must ask the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination.⁶

In the instant case, the letter from the Office referring appellant to a second opinion physician was dated October 2, 1998. In that letter, appellant was informed that her appointment was scheduled for October 16, 1998 that her full cooperation was required, that her failure to submit to the examination could result in the suspension of benefits, and that, if she could not keep the appointment, she should advise the Office in writing. There is no indication that appellant submitted a written response detailing why she could not attend the appointment. There is some internal Office correspondence in the file indicating that appellant contacted the Office and stated that she could not make the appointment because she did receive notice of said appointment until October 15, 1998, or one day prior to the appointment, and that "this was not enough time." On October 22, 1998 the Office issued a notice of proposed termination for appellant's failure to attend the October 16, 1998 appointment, and allowed her 14 days from the date of the letter to respond and give good cause why her entitlement to compensation should not be suspended in accordance with 5 U.S.C. § 8123(d). Appellant did not file a timely response. As appellant gave no timely written notice explaining her failure to attend the October 16, 1998 appointment despite being given an opportunity to do so, the Office properly acted within its discretion in suspending benefits in its decision dated December 1, 1998.

² 5 U.S.C. § 8123(a).

³ *James C. Tablet*, 42 ECAB 974, 976 (1991); *Doreen Jenkins*, 32 ECAB 1502, 1505 (1981).

⁴ *Id.*, *William B. Saviolidis*, 35 ECAB 283, 286 (1983); *Joseph W. Bianco*, 19 ECAB 426, 428 (1968).

⁵ 5 U.S.C. § 8123(d).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14 (April 1993).

The decision of the Office of Workers' Compensation Programs dated December 1, 1998 is hereby affirmed.

Dated, Washington, DC
May 7, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member