



## **FACTUAL HISTORY**

On March 6, 1995 appellant, then a 43-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped on ice and twisted his back while in the performance of duty. OWCP accepted the claim for lumbar strain, displacement of lumbar intervertebral disc without myelopathy, and thoracic or lumbosacral neuritis or radiculitis.<sup>3</sup> Appellant stopped work on March 6, 1995 and returned to limited duty with restrictions on March 27, 1995. He worked in a limited-duty capacity on and off until June 19, 1995, when he suffered a recurrence of disability. Appellant stopped work completely on July 25, 1995. The record reflects that OWCP paid him wage-loss compensation on the periodic rolls as of August 11, 2002.

In a July 21, 2022 letter, OWCP notified appellant that he was being referred for an impartial medical examination on September 7, 2022 with Dr. Jeffrey Parker, Board-certified in internal medicine, to resolve a conflict of medical opinion regarding his work capacity due to the accepted March 6, 1995 injury. The letter informed appellant of his obligations to attend and cooperate with the examination, and explained that his 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 his appointment and was mailed to his address of record.

In a July 27, 2022 telephone call, appellant expressed his frustration regarding the scheduled impartial medical examination. He then did not attend the examination that was scheduled for September 7, 2022.

In a September 12, 2022 notice, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits because he failed to attend the September 7, 2022 medical examination. It afforded him 14 days to respond in writing with an explanation as to why he did not attend the examination with Dr. Parker. OWCP advised appellant that if good cause was not established, his compensation benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until he attended and fully cooperated with the examination. It instructed him to contact OWCP immediately if he intended to report to a rescheduled examination with Dr. Parker.

On September 13, 2022 OWCP received appellant's undated statement alleging that his neck issues prevented him from attending the scheduled impartial medical examination. He indicated that he saw his treating physician regarding his neck issues, and had another appointment scheduled for September 15, 2022. Appellant also indicated that despite receiving two injections at the base of his neck, his neck had worsened, and he was restricted to laying on his back. In a September 3, 2022 work excuse note, Stephanie Sharp, a certified nurse practitioner, advised that appellant was unable to work due to "increase in exacerbation" of chronic neck pain.

On September 19 and 23, 2022 appellant informed OWCP that his neck had been painful for approximately one month. He also noted that his doctor had given him a note regarding his

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<sup>3</sup> Under OWCP File No. xxxxxx010, a February 6, 1993 date of injury, appellant has an accepted claim for a lumbar strain. He did not lose any time from work and returned to work with restrictions. Appellant has preexisting back conditions, including spinal stenosis and disc herniation. He underwent a lumbar laminectomy in 1986.

neck, and his inability to return to work. On September 26, 2022 OWCP received appellant's letter requesting an election for Office of Personnel Management retirement benefits.

By decision dated November 7, 2022, 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 September 7, 2022.

### **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>4</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>5</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>6</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>7</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>8</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>9</sup>

### **ANALYSIS**

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective November 7, 2022, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

On July 21, 2022 OWCP notified appellant that it had scheduled a September 12, 2022 impartial medical examination with Dr. Parker. It explained that his entitlement to compensation could be suspended, pursuant to 5 U.S.C. § 8123(d), if he refused to submit to or obstructed an

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<sup>4</sup> 5 U.S.C. § 8123.

<sup>5</sup> See *Q.V.*, Docket No. 21-1188 (issued May 26, 2022); *R.D.*, Docket No. 20-1551 (issued November 8, 2021); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

<sup>6</sup> 20 C.F.R. § 10.320.

<sup>7</sup> 5 U.S.C. § 8123(d); see also *id.* at § 10.323; *R.T.*, Docket No. 20-0933 (issued July 29, 2022); *Q.V.*, *supra* note 5; *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

<sup>9</sup> *Id.* at Chapter 2.810.13e.

examination. On July 27, 2022 appellant expressed his frustration over having to attend an OWCP-directed examination.

Appellant did not appear for the September 7, 2022 appointment, nor did he attempt to reschedule the appointment prior to the designated time.<sup>10</sup> In a notice dated September 12, 2022, OWCP provided him 14 days to submit a valid reason in writing for his failure to attend the scheduled medical appointment. On September 13, 2022 it received appellant's statement pertaining to his neck condition and a September 3, 2022 work excuse note from a certified nurse practitioner, which advised that appellant was unable to work due to increase in exacerbation of chronic neck pain. As reflected by the September 3, 2022 work excuse note, appellant attended a medical appointment with his provider a few days prior to the scheduled September 7, 2022 examination, and had set up another appointment with his treating physician a week after the scheduled examination. While the September 3, 2022 work excuse note indicated that he was disabled from work, absent additional information, such a statement on disability is not relevant to the issue of whether or not he could attend an OWCP scheduled examination. Thus, given the circumstances, appellant has not established good cause for his failure to attend, or his obstruction of, the September 7, 2022 scheduled OWCP examination.

As appellant did not attend the impartial medical examination as scheduled and failed to provide good cause for failing to appear within 14 days of OWCP's September 12, 2022 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 November 7, 2022.<sup>11</sup>

### **CONCLUSION**

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective November 7, 2022, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

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<sup>10</sup> See *R.T.*, Docket No. 20-0933 (issued July 29, 2022).

<sup>11</sup> *R.T.*, *id.*; *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 November 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board