

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

A.P., Appellant)	
)	
and)	Docket No. 22-0709
)	Issued: November 25, 2024
U.S. POSTAL SERVICE, PROVIDENCE)	
PROCESSING & DISTRIBUTION CENTER,)	
Providence, RI, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2022 appellant filed a timely appeal from an October 12, 2021 merit decision and a March 11, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's compensation benefits, pursuant to 5 U.S.C. § 8123(d), effective October 12, 2021, due to his failure to attend a scheduled medical examination; and (2) whether OWCP properly determined that appellant had abandoned his request for an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 20, 2011 appellant, then a 53-year-old senior manager, distribution operations, filed an occupational disease claim (Form CA-2) alleging that he sustained stress causally related to factors of his federal employment. OWCP accepted the claim for a single episode of severe major depression. It paid appellant wage-loss compensation for total disability on the supplemental rolls effective January 23, 2012 and on the periodic rolls effective February 12, 2012.

On August 27, 2021 OWCP referred appellant to Dr. Michael S. Braverman, a Board-certified psychiatrist, for a second opinion examination scheduled for September 21, 2021 at 1:00 p.m. Eastern Standard Time (EST).

On September 3, 2021 appellant advised OWCP that he would be unable to attend the scheduled September 21, 2021 examination as he was previously scheduled to be out of town. OWCP replied that he should have provided the dates he would be out of town before the appointment was scheduled. It requested that appellant provide a written statement explaining why he was unable to attend the scheduled appointment.

In an e-mail dated September 14, 2021, OWCP's third-party scheduling service advised OWCP that appellant would be out of town until November 9, 2021 and had requested that his second opinion examination be scheduled as a telehealth visit.

In a letter dated September 16, 2021, OWCP requested that appellant submit a medical report from his primary care physician supporting that he should not attend, and factual evidence establishing that he had scheduled the vacation prior to the July 16, 2021 notification that his case was being referred for a second opinion examination.

In a memorandum of telephone call (Form CA-110) dated September 21, 2021, appellant notified OWCP that he would not be at the scheduled appointment. OWCP advised him of the type of medical and factual documentation required, including that his vacation was scheduled prior to being notified of the appointment and that he should not fly due to COVID-19. It also left a message for appellant on September 22, 2021 explaining that compensation benefits would be reinstated once he advised that he was willing to attend an appointment.

On September 22, 2021 OWCP's scheduling service advised OWCP that appellant did not attend the scheduled appointment.

On September 23, 2021 OWCP informed appellant of its proposed suspension of his wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), as he failed to attend the scheduled examination on September 21, 2021 with Dr. Braverman. It notified him that he could provide a written explanation of his reasons for failing to attend the scheduled examination, with substantive corroborating evidence, within 14 days. OWCP also indicated that it would reschedule the examination if appellant informed them that he intended to cooperate with any rescheduled examination. It mailed the proposed notice of suspension to his last known address of record.

By decision dated October 12, 2021, OWCP suspended appellant's wage-loss compensation and medical benefits effective that date for failure to attend to a scheduled medical

examination under 5 U.S.C. § 8123(d). It found that he had not explained his failure to attend the September 21, 2021 examination.

On November 1, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a Form CA-110, appellant advised that he had moved and needed to change his address. OWCP informed him to submit a signed request through the mail.

In a January 13, 2022 notice, OWCP's hearing representative informed appellant that a telephonic hearing was scheduled for February 28, 2022 at 2:15 p.m. EST. The notice provided a toll-free number and the required passcode to participate in the telephone hearing. OWCP's hearing representative instructed appellant to call the toll-free number provided and enter the passcode when prompted. The hearing representative mailed the letter to appellant's last known address of record. Appellant did not call in for the scheduled hearing, and there is no indication that he requested postponement.

By decision dated March 11, 2022, OWCP found that appellant had abandoned his request for an oral hearing. It determined that he had failed to appear at the telephonic hearing scheduled for February 28, 2022 and had failed to contact OWCP either before or after the scheduled hearing to request a postponement or explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

Section 8123(d) 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.² 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.³ 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.⁴ 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.⁵ 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.⁶ If good cause for the refusal or obstruction is not

² *Id.* at § 8123(d).

³ *See T.A.*, Docket No. 21-0528 (issued December 14, 2021); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

⁴ 20 C.F.R. § 10.320.

⁵ *See* 5 U.S.C. § 8123; *id.* at § 10.323; *A.P.*, Docket No. 19-0328 (issued August 6, 2019); *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly suspended appellant's compensation benefits pursuant to 5 U.S.C. § 8123(d), effective October 12, 2021, due to his failure to attend a scheduled medical examination.

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. The only limitation on OWCP's authority, with regard to instructing a claimant to undergo a medical examination, is that of reasonableness.⁸ The Board has interpreted the plain meaning of section 8123(d) to provide that compensation is not payable while a refusal or obstruction of an examination continues unless appellant can establish good cause for failing to report at the scheduled time.⁹

OWCP informed appellant on July 16, 2021 that he would be referred for a second opinion examination. In a letter dated August 27, 2021, it referred him to Dr. Braverman for a second opinion examination scheduled for 1:00 p.m. EST on September 21, 2021.

Appellant advised OWCP on September 3, 2021 that he would be out of town at the time of the scheduled appointment. OWCP requested that he provide a written statement explaining why he could not attend the appointment. In a letter dated September 16, 2021, it requested that he submit a medical report supporting that he could not attend and factual documentation establishing that he had scheduled his vacation prior to receiving the July 16, 2021 notice that he was being referred for a second opinion examination.

On September 21, 2021 appellant telephoned OWCP and advised that he would not be at the scheduled examination. He did not appear for the September 21, 2021 appointment.

As noted, the only limitation on OWCP's authority, with regard to instruction a claimant to undergo a medical examination, is one of reasonableness.¹⁰ Appellant must provide a sufficient reason for failure to attend a scheduled medical examination.¹¹ Prior to OWCP's decision suspending his compensation, he failed to submit the requested factual evidence supporting that he had scheduled his vacation prior to its notification of the referral to a second opinion or provide medical evidence establishing that he should not fly due to COVID-19. In a notice of suspension

⁷ *Id.* at Chapter 2.810.13e.

⁸ *J.P.*, Docket No. 20-1112 (issued August 24, 2021); *B.W.*, Docket No. 17-0847 (issued July 18, 2017); *Lynn C. Huber*, 54 ECAB 281 (2002).

⁹ *J.P.*, *id.*

¹⁰ *B.W.*, *supra* note 8; *T.W.*, Docket No. 16-1524 (issued February 6, 2017).

¹¹ *See D.K.*, Docket No. 18-0217 (issued June 27, 2018).

dated September 23, 2021, OWCP afforded appellant 14 days to submit a valid reason for his failure to attend the scheduled medical appointment. No response was received.

As appellant did not attend the examination as scheduled and failed to provide good cause for failing to appear within 14 days of OWCP's September 23, 2021 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 October 12, 2021.¹²

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹³ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁴ OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹⁵

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

Following OWCP's October 21, 2021 decision suspending his wage-loss compensation and medical benefits, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a January 13, 2022 letter, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for February 28, 2022 at 2:15 p.m. EST. The hearing representative properly mailed the hearing notice to appellant's last

¹² See *Q.V.*, Docket No. 21-1188 (issued May 26, 2022); *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

¹³ 20 C.F.R. § 10.616(a).

¹⁴ *Id.* at § 10.617(b).

¹⁵ *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹⁶ 20 C.F.R. § 10.622(f); *supra* note 6 at Chapter 2.1601.6g (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

known address of record¹⁷ and provided him with a toll-free number and a passcode to use at the time of the scheduled hearing. There is no evidence of nondelivery of the hearing notice. Appellant, however, failed to appear for the scheduled hearing and he did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing.¹⁸ The Board thus finds that OWCP properly determined that he abandoned his request for an oral hearing.¹⁹

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits, pursuant to 5 U.S.C. § 8123(d), effective October 12, 2021, due to his failure to attend a scheduled medical examination. The Board further finds that OWCP properly determined that he abandoned his request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2021 and March 11, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 25, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁷ *R.J.*, Docket No. 18-1701 (issued May 18, 2020); *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

¹⁸ *R.J.*, *id.*; *A.J.*, *supra* note 16.

¹⁹ *E.M.*, Docket No. 29-0837 (issued January 27, 2021).