

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

V.R., Appellant

and

**DEPARTMENT OF THE INTERIOR, BUREAU
OF INDIAN AFFAIRS, Billings, MT, Employer**

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**Docket No. 13-130
Issued: February 26, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 22, 2012 appellant filed a timely appeal from an October 3, 2012 merit 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 the case.²

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal appellant notes that he was late and lost his file. He submitted a completed Form EN1032 subsequent to the October 3, 2012 decision and with his appeal. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits for failure to submit an EN1032 form when requested.

FACTUAL HISTORY

On August 8, 2002 appellant, then a 53-year-old equipment operator, sustained a fractured vertebra and broken arm on August 8, 2002 when he fell off a water wagon. OWCP accepted the claim for a right forearm fracture and C2 fracture. It expanded the claim to include cervical spondylosis without myelopathy. Appellant received wage-loss compensation and medical benefits and was placed on the periodic rolls by letter dated October 17, 2002. He had regularly filed EN1032 forms since being placed on the periodic rolls.

On August 15, 2012 OWCP, in the regular course of business, asked appellant to complete a Form EN1032 within 30 days to provide information regarding his earnings from the prior reporting period. Appellant was advised, as he was regularly advised, that his benefits would be suspended pursuant to 20 C.F.R. § 10.528 if a completed EN1032 form was not received by OWCP within 30 days. No timely response was received.

By decision dated October 3, 2012, OWCP suspended appellant's wage-loss benefits effective October 3, 2012 because he did not submit a complete Form EN1032, as requested. It informed him that, when he completed the EN1032 form, his compensation would be restored retroactively from the date of suspension.

LEGAL PRECEDENT

FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.³

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.⁴ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report.⁵ At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁶

³ 5 U.S.C. § 8106(c).

⁴ 20 C.F.R. § 10.528.

⁵ See *Lucille A. Pettaway*, 55 ECAB 228 (2004); *Demetrius Beverly*, 53 ECAB 305 (2002).

⁶ *Supra* note 3.

ANALYSIS

OWCP requested that appellant submit an EN1032 form with respect to his employment activity performed for the prior 15 months. It requested the information by letter dated August 15, 2012 and advised him to submit the form within 30 days or his compensation could be suspended. The record establishes that appellant did not respond prior to October 3, 2012. Based on the evidence of record, OWCP properly suspended appellant's compensation effective October 3, 2012, pursuant to 20 C.F.R. § 10.528.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits based on his failure to timely submit a completed EN1032 form when requested.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board