

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

R.N., Appellant)	
)	
and)	Docket No. 21-1326
)	Issued: April 27, 2022
DEPARTMENT OF JUSTICE, BUREAU OF)	
PRISONS, Three Rivers, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 1, 2021 appellant filed a timely appeal from a March 10, 2021 merit decision and a July 2, 2021 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted to enable him to express himself more clearly and to answer any questions. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's compensation benefits, effective March 28, 2021, for failure to complete a Form CA-1032 as requested; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

FACTUAL HISTORY

On May 22, 1985 appellant, then a 49-year-old corrections officer, filed an occupational disease claim (Form CA-2) alleging that he had developed anxiety due to factors of his federal employment. He stopped work on April 10, 1985 and did not return. OWCP accepted the claim for anxiety disorder. The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls commencing June 16, 2002.

OWCP periodically requested that appellant submit financial disclosure statements (Form CA-1032) which solicited information about his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

On January 11, 2021 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous 15 months and that a Form CA-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed Form CA-1032 and return it within 30 days or his benefits would be suspended. OWCP mailed the notice to appellant's last known address of record. No response was received within the time allotted.

By decision dated March 10, 2021, OWCP suspended appellant's compensation benefits, effective March 28, 2021, for failure to complete and return the Form CA-1032, as requested. It advised that, if he were to complete and return the form, his compensation benefits would be restored retroactively to the date they were suspended.

By appeal request form dated March 16, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By letter dated May 14, 2021, the OWCP hearing representative notified appellant that a telephonic hearing was scheduled for June 22, 2021, at 12:45 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. The OWCP hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear at the scheduled time and no request for postponement was made.

By decision dated July 2, 2021, OWCP determined that appellant had abandoned his request for an oral hearing. It further found that there was no indication in the case record that appellant had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of 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. At that time, OWCP will reinstate compensation retroactive to the date of suspension, if the employee remains entitled to compensation.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective March 28, 2021, for failure to complete the Form CA-1032, as requested.

On January 11, 2021 OWCP provided appellant with a Form CA-1032. It properly advised him that if he did not completely answer all of the questions and return the form within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was properly sent to appellant's last known address of record and there is no indication that it was returned as undeliverable.⁶ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address of record is presumed to be received by the addressee.⁷

The record indicates that appellant failed to timely submit the Form CA-1032 within 30 days of OWCP's request. As appellant was receiving wage-loss compensation, he was required to complete the Form CA-1032. His failure to do so within 30 days resulted in the suspension of compensation. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective March 28, 2021, pursuant to 20 C.F.R. § 10.528.

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528. *See C.R.*, Docket No. 21-0672 (issued September 29, 2021); *see also H.B.*, Docket No. 19-0405 (issued June 26, 2019); *M.S.*, Docket No. 18-1107 (issued December 28, 2018); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁵ *Id.*; *see also id.* at § 10.525.

⁶ *See C.R and H.B.*, *supra* note 4; *J.J.*, Docket No. 13-1067 (issued September 20, 2013); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

⁷ *See P.B.*, Docket No. 21-0697 (issued October 27, 2021); *H.B.*, *supra* note 4; *J.J.*, Docket No. 13-1067 (issued September 20, 2013); *Kenneth E. Harris, id.*

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.⁸ 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.⁹ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹⁰

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.¹¹

ANALYSIS -- ISSUE 2

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

Following OWCP's March 10, 2021 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. The OWCP hearing representative scheduled a telephonic hearing for June 22, 2021 at 12:45 p.m. EST and notified appellant of the hearing more than 30 days prior by letter dated May 14, 2021. The hearing representative properly mailed the hearing notice to appellant's last known address of record and provided instructions on how to participate.¹² There is no evidence of non-delivery of the hearing notice. Appellant failed to appear for the scheduled hearing and did not request a postponement or provide an explanation to OWCP for his failure to appear within 10 days after the scheduled hearing.¹³ The Board thus finds that OWCP properly determined that he abandoned his request for an oral hearing.¹⁴

⁸ 20 C.F.R. § 10.616(a).

⁹ *Id.* at § 10.617(b).

¹⁰ See *C.H.*, Docket No. 21-0204 (issued November 29, 2021); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹¹ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

¹³ See *A.J.*, *supra* note 11.

¹⁴ See *E.S.*, *supra* note 12.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits, effective March 28, 2021, for failure to complete a Form CA-1032, as requested, and that OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the March 10 and July 2, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 27, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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