

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

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**A.J., Appellant** )

**and** )

**DEPARTMENT OF THE AIR FORCE, TINKER** )  
**AIR FORCE BASE, OK, Employer** )  
\_\_\_\_\_ )

**Docket No. 23-0304**  
**Issued: August 10, 2023**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On December 5, 2022 appellant filed a timely appeal from a November 15, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly suspended appellant's wage-loss compensation benefits, effective November 15, 2022, due to his failure to submit a Form EN-1032, as requested.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the November 15, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On March 21, 1988 appellant, then a 32-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 1988 he struck his right leg on an aero stand and jet fuel spilled into the open wound while in the performance of duty. He stopped work on March 10, 1988. OWCP accepted appellant's claim for right leg open wound, right leg and foot cellulitis, and thrombophlebitis of the deep vessels of the right lower extremity. It paid him wage-loss compensation for intermittent periods of disability. Appellant underwent vocational rehabilitation and returned to part-time, modified duty in September 1999. OWCP adjusted his wage-loss compensation benefits to reflect his loss of wage-earning capacity. It paid appellant on the periodic rolls, effective June 16, 2002.

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

In a September 21, 2022 letter, 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 EN-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed Form EN-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 November 15, 2022, OWCP suspended appellant's wage-loss compensation benefits effective that date, due to his failure to submit the Form EN-1032, as requested. It noted that, if he completed and returned the enclosed copy of the Form EN-1032, his compensation benefits would be restored retroactively to the date they were suspended.

## **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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> *Supra* note 1 at § 8106(b).

<sup>4</sup> 20 C.F.R. § 10.528.

<sup>5</sup> *Id.*, see also *id.* at § 10.525.

### ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective November 15, 2022, due to his failure to complete a Form EN-1032, as requested.

On September 21, 2022 OWCP provided appellant with a Form EN-1032 and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It properly notified him that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. The Board has held that, absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.<sup>6</sup> The presumption is commonly referred to as the "mailbox rule."<sup>7</sup> The record reflects that OWCP's letter was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable.

The record establishes that appellant did not submit a completed Form EN-1032 prior to the November 15, 2022 OWCP decision suspending his benefits. Thus, the Board finds that OWCP properly suspended his compensation benefits, effective November 15, 2022, pursuant to 20 C.F.R. § 10.528.<sup>8</sup>

### CONCLUSION

The Board finds that OWCP has met its burden of proof to suspend appellant's wage-loss compensation benefits, effective November 15, 2022, due to his failure to submit a Form EN-1032, as requested.

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<sup>6</sup> *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *Claudia J. Whitten*, 52 ECAB 483 (2001).

<sup>7</sup> *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

<sup>8</sup> *See B.F.*, Docket No. 22-0585 (issued October 20, 2022); *W.L.*, Docket No. 18-1051 (issued March 24, 2021); *see also James A. Igo*, 49 ECAB 189 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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