

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

C.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
U.S. CUSTOMS & BORDER PROTECTION,)
U.S. BORDER PATROL, Chula Vista, CA,)
Employer)

**Docket No. 24-0188
Issued: May 1, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 18, 2023 appellant filed a timely appeal from a November 15, 2023 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 this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 15, 2023 decision, OWCP received additional evidence. 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.*

ISSUE

The issue is whether OWCP properly suspended appellant's wage-loss compensation benefits, effective November 15, 2023, for failure to complete a Form EN-1032 as requested.

FACTUAL HISTORY

Appellant, a law enforcement communication assistant, filed a notice of traumatic injury (Form CA-1) alleging that she had sustained a right knee injury in the performance of duty. OWCP accepted the claim for right knee tear of the medial meniscus, right knee sprain of the cruciate ligament, and neoplasm. The record reflects that appellant received loss of wage-earning compensation on the periodic rolls as of June 16, 2002.

On September 25, 2023 OWCP informed appellant that federal regulations required her 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 advised her that she must fully answer all questions on the enclosed Form EN-1032 and return it within 30 days or her benefits would be suspended. OWCP mailed the letter to appellant's last known address. No response was received.

By decision dated November 15, 2023, OWCP suspended appellant's wage-loss compensation benefits, effective that date, due to her failure to submit the Form EN-1032, as requested. It advised that, if she were to complete and return the form, her compensation benefits would be restored retroactively to the date they were suspended.

LEGAL PRECEDENT

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

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528. *A.S.*, Docket No. 23-0437 (issued February 16, 2024). *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.

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective November 15, 2023, for failure to complete the Form EN-1032 as requested.

On September 25, 2023 OWCP provided appellant with a Form EN-1032. It properly advised her that, if she did not completely answer all of the questions and return the form within 30 days, her benefits would be suspended. The record reflects that OWCP's letter was properly mailed 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 EN-1032 within 30 days of OWCP's request. Her failure to file a Form EN-1032 within 30 days resulted in the suspension of compensation. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective November 15, 2023, pursuant to 20 C.F.R. § 10.528.⁸

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective November 15, 2023, for failure to complete a Form EN-1032 as requested.

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

⁷ *Id.*

⁸ *A.S.*, *supra* note 4; *see R.S.*, Docket No. 22-0773 (issued May 22, 2023); *R.B.*, Docket No. 20-0176 (issued June 25, 2020); *M.W.*, Docket No. 15-0507 (issued June 18, 2015).

ORDER

IT IS HEREBY ORDERED THAT the November 15, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2024
Washington, DC

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

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

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