

to limited duty and sustained several recurrences of disability. He stopped work on December 29, 1992 and had additional right shoulder surgery on August 30, 1993.¹ Appellant underwent work hardening in 1996 and returned to a light-duty position in September 1996. On October 27, 2000 he sustained an employment-related left shoulder sprain and impingement. He thereafter worked intermittently until June 21, 2001 when he sustained an accepted recurrence of disability. Appellant underwent authorized surgical repair on August 27, 2001.² He did not return to work and was placed on the periodic rolls.

On July 3, 2008 the Office forwarded appellant an Office Form EN1032 requesting information.³ It advised him that, if he did not return the form within 30 days, his compensation would be suspended but would be restored upon his completion of the forms. By decision dated September 24, 2008, the Office suspended appellant's wage-loss compensation because he had not submitted the requested EN1032 forms.⁴

LEGAL PRECEDENT

Section 10.515 of the Office's regulations provide that an employee who is receiving compensation for partial or total disability will periodically be required to submit a report of earnings from employment or self-employment, either part time or full time.⁵

Office procedures provide that when a claimant has an attorney or other legal representative, the original of any letter to the claimant should be sent to that person, with a copy to the claimant. Similarly, where the claimant is sent a copy of a letter, the attorney or other representative should receive a copy.⁶

ANALYSIS

On March 15, 1990 appellant notified the Office that he had authorized Mr. Shanahan to act as his representative. Thereafter, the Office mailed appellant's designated representative copies of relevant correspondence and approved numerous fee requests. The record establishes, however, that the Office did not send appellant's representative a copy of the July 3, 2008 correspondence in which a blank EN1032 form was forwarded to appellant. On September 24, 2008 the Office suspended appellant's wage-loss compensation because he did not timely return the completed EN1032 form.

¹ By decision dated July 2, 1993, the Office determined that appellant was not entitled to a schedule award for his right upper extremity as he had not reached maximum medical improvement.

² Appellant also filed a Form CA-1, traumatic injury claim, alleging that he injured his back on December 23, 2000. By decision dated February 9, 2002, the Office denied the claim.

³ The forms request information regarding employment, dependents, additional benefits, third-party settlements, and fraud and/or felony convictions.

⁴ In the September 24, 2008 decision, the Office identified the forms as CA-1032 forms.

⁵ 20 C.F.R. § 10.515.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Communications*, Chapter 300.4(e) (February 2000).

The Board finds that the Office was required to send to appellant's representative, Mr. Shanahan, a copy of the Office's July 3, 2008 letter. The failure to notify appellant's attorney denied appellant the opportunity to have his representative assist in avoiding suspension of wage-loss compensation. As a result, appellant was unfairly prejudiced by the omission to his detriment. Thus the final decision dated September 24, 2008 suspending appellant's wage-loss compensation was not properly issued.⁷

CONCLUSION

The Board finds that the Office improperly suspended appellant's wage-loss compensation on the grounds that he did not timely provide a completed EN1032 form.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 24, 2008 be reversed.

Issued: August 17, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ See Sara K. Pearce, 51 ECAB 517 (2000).