

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

R.T., Appellant	)	
	)	
and	)	<b>Docket No. 09-675</b>
	)	<b>Issued: October 14, 2009</b>
	)	
<b>DEPARTMENT OF JUSTICE, U.S. MARSHALS</b>	)	
<b>SERVICE, New York, NY, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 9, 2009 appellant filed a timely appeal from the November 21, 2008 merit decision of the Office of Workers' Compensation Programs, which suspended her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly suspended appellant's compensation for failing to submit a Form EN1032, as requested.

**FACTUAL HISTORY**

On March 30, 1981 appellant, then a 26-year-old deputy marshal, sustained employment-related low back derangement when she slipped while exiting a vehicle. She stopped work on the date of injury and has not returned to work. The Office paid appellant appropriate compensation for total disability.

On October 1, 2008 the Office sent appellant an income and employment disclosure Form EN1032. The accompanying instructions advised appellant to completely answer all questions and return the form within 30 days of the date of the letter. She was advised that, if she failed to comply, her benefits would be suspended in accordance with 20 C.F.R. § 10.528 of the Office's regulations.<sup>1</sup> The form was sent to appellant's address of record.

By decision dated November 21, 2008, the Office suspended appellant's compensation effective November 23, 2008, because she failed to submit the requested Form EN1032. Appellant was advised that her compensation benefits would be restored retroactively to the date of suspension when she submitted the requested information.<sup>2</sup>

### **LEGAL PRECEDENT**

Section 10.528 of Office's regulations provide that each employee who is receiving compensation benefits shall complete an affidavit as to any work or activity indicating an ability to work, which the employee has performed for the prior 15 months and that if the 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 under sections 8105 or 8106 of the Federal Employees' Compensation Act<sup>3</sup> is suspended until the Office receives the requested report. At that time, the Office will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>4</sup>

### **ANALYSIS**

On October 1, 2008 the Office sent appellant a correctly addressed request for completion of a Form EN1032. It requested a response within 30 days from the date of the Form EN1032. The form was sent to appellant's address of record.<sup>5</sup> No response was submitted by her. As appellant did not respond to the Office's request for completion of the Form EN1032, the Board finds that the Office properly suspended her wage-loss compensation pursuant to 20 C.F.R. § 10.528 effective November 23, 2008.

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<sup>1</sup> Appellant was also asked to submit an authorization form to obtain earnings information from the Social Security Administration (SSA).

<sup>2</sup> Following the issuance of the Office's November 21, 2008 decision, appellant submitted additional evidence to the Board including a Form EN1032 dated December 20, 2008. She also submitted this evidence on appeal. The Board may not consider evidence for the first time on appeal, which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.528; see *Lucille A. Pettaway*, 55 ECAB 228 (2004).

<sup>5</sup> Under the mailbox rule, appellant is presumed to have received the Office form in the ordinary course of business. See *Levi Drew Jr.*, 52 ECAB 442 (2001).

**CONCLUSION**

The Board finds that the Office properly suspended appellant's compensation for failing to submit a Form EN1032, as requested.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 21, 2008 decision of the Office of Workers' Compensations Programs is affirmed.

Issued: October 14, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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