

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

L.I., Appellant)	
)	
and)	Docket No. 12-1104
)	Issued: December 3, 2012
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF INDIAN AFFAIRS, Warm Springs, OR,)	
Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 24, 2012 appellant filed a timely appeal from an April 4, 2012¹ decision of the Office of Workers' Compensation Programs (OWCP) suspending his entitlement to compensation. Pursuant to the Federal Employees' Compensation Act² (FECA) and 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 OWCP properly suspended appellant's compensation benefits for failure to submit a Form CA-1032 when requested.

¹ The Board and OWCP cannot simultaneously exercise jurisdiction over the same issue. See 20 C.F.R. § 501.2(c)(3). An OWCP decision issued while the Board has jurisdiction over the matter in dispute is null and void. See *Lawrence Sherman*, 55 ECAB 35 (2004); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). Because OWCP's Branch of Hearings and Review issued its May 2, 2012 decision, finding that the case was not in posture for a hearing as appellant had completed the Form CA-1032 following OWCP's April 4, 2012 decision, after the Board had obtained jurisdiction, that decision is null and void.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 7, 2007 appellant, then a 43-year-old crew member, filed a traumatic injury claim alleging that on July 4, 2007 he strained his lower back while lifting. OWCP accepted the claim for lumbar back sprain, displacement of lumbar intervertebral disc without myelopathy and temporary aggravation of preexisting seizure disorder due to pain. By letter dated July 29, 2008, it placed appellant on the periodic rolls for temporary total disability.

On December 13, 2011 OWCP asked appellant to complete Form CA-1032 within 30 days to provide information regarding his earnings from the prior year. By letter dated January 26, 2012, it advised appellant that his benefits would be suspended pursuant to 20 C.F.R. § 10.528 if a completed Form CA-1032 was not received by OWCP within 30 days. No response was received.

By decision dated April 4, 2012, OWCP suspended appellant's compensation benefits effective April 8, 2012 because he did not provide a completed Form CA-1032. It informed him that, if he completed Form CA-1032, his compensation would be restored retroactively from the date of suspension.³

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.⁴

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.⁵ 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.⁶ At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁷

ANALYSIS

OWCP requested that appellant submit a Form CA-1032 with respect to any employment activity performed for the prior 15 months on December 13, 2011. It requested the information

³ Subsequent to the April 4, 2012 decision, appellant submitted a completed Form CA-1032. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁴ 5 U.S.C. § 8106(c).

⁵ 20 C.F.R. § 10.528.

⁶ See *Lucille A. Pettaway*, 55 ECAB 228 (2004); *Demetrius Beverly*, 53 ECAB 305 (2002).

⁷ 20 C.F.R. § 10.528.

by letter dated January 26, 2012 and advised appellant to submit the form within 30 days or his compensation could be suspended. The record does not establish that appellant responded prior to OWCP's issuance of its April 4, 2012 decision.

Based on the evidence of record, the Board finds that OWCP properly suspended appellant's compensation effective April 8, 2012 pursuant to 20 C.F.R. § 10.528.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly suspended appellant's entitlement to compensation benefits based on his failure to timely submit a completed Form CA-1032 when requested.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 4, 2012 is affirmed.

Issued: December 3, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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