

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROYAL E. SMITH and OFFICE OF PERSONNEL MANAGEMENT,
U.S. CIVIL SERVICE COMMISSION, Dallas, Tex.

*Docket No. 96-1009; Submitted on the Record;
Issued May 15, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's entitlement to compensation benefits effective December 27, 1995, based upon his failure to complete a Form CA-1032 as requested.

This is the third appeal before the Board in this case. On February 29, 1988 the Board issued an Order Remanding Case in Docket No. 87-1912, and on July 27, 1992 the Board reversed the Office's finding of forfeiture in Docket No. 91-356, 43 ECAB 965 (1992); petition for recon. denied, 44 ECAB 417 (1993). The facts and circumstances of the case are clearly delineated in the 1992 Board decision and are hereby incorporated by reference.

On February 13, 1995 the Office requested that appellant complete and return an enclosed Form CA-1032 covering the previous 15-month period. Appellant was advised in the cover letter that he must completely answer all questions and return that form within 30 days, otherwise his compensation benefits would be suspended in accordance with 20 C.F.R. § 10.125.

In a March 3, 1995 response, appellant questioned the Office's legal authority to request information of this sort from a "totally disabled person receiving benefits under 5 U.S.C. § 8105" in light of *United States v. Dorey*, 711 F.2d 125 (9th Cir. 1983). Nevertheless, appellant generated the complete contents of the Form CA-1032 on his computer, answered all of the questions, and submitted the requested information regarding his earnings and employment for the period in question to the Office.

In an April 5, 1995 response to appellant's March 3, 1995 letter, the District Director of the Office noted that CA-1032 forms were used to find out about changes in a claimant's status that might have an effect on their entitlement to compensation. The Director also stated that the fact that a person is receiving compensation at the rate for total disability does not mean that they are, in fact, totally disabled. He further noted that medical evidence supporting total disability was not infallible and that it had been their experience that some people did work and have

earnings from their employment although they were receiving compensation for total disability, and although they had physicians who opined that they were incapable of working.

On October 3, 1995 the Office again requested that appellant complete and return another Form CA-1032 covering the previous 15-month period. The Office advised appellant that the information would be used to determine his qualification for continued benefits, or whether an adjustment was warranted, and advised that the form must be returned to the Office within 30 days or his benefits would be suspended in accordance with 20 C.F.R. § 10.125.

On November 2, 1995 appellant responded, repeating his earlier contention that the Office lacked statutory authority to request information regarding his earnings and employment in light of *Dorey*. Appellant generated the form CA-1032 on his computer and completed the responses to the questions but omitted the part containing the paragraphs of certification and instead inserted a statement of his objections to the request for information. He did not complete and return the actual form.

On November 8, 1995 the Office advised appellant that the November 2, 1995 submission was an unacceptable response to the requirement that a CA-1032 be completed and returned to the Office within 30 days, and it provided him with another 14 days within which to fill out and return the Form CA-1032 sent him on October 3, 1995.

In a November 10, 1995 reply, appellant repeated his belief that he did not have to respond to the Office's October 3, 1995 request since "all benefits paid directly to me from the periodic roll have been under 5 U.S.C. § 8105." Appellant also failed to complete and return the form in question within the period of time allotted.

By decision dated December 27, 1995, the Office suspended appellant's right to wage-loss benefits as of that date finding that he had failed to submit a completed Form CA-1032 as requested by the Office on October 3, 1995.

The Board finds that the Office properly suspended appellant's entitlement to compensation benefits effective December 27, 1995, based upon his failure to complete a Form CA-1032 as requested.

Section 8106(b) of the Act authorizes the Secretary of Labor to "require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies." Pursuant to this statutory authority, as well as his authority under 5 U.S.C. § 8149 to "prescribe rules and regulations necessary for the administration and enforcement" of the Act, the Secretary has promulgated 20 C.F.R. § 10.125(a)(1996), which provides as follows:

"While in receipt of compensation for partial *or total* disability, and unless found by the Office to be unnecessary or inappropriate, an employee shall periodically be required to submit an affidavit or other report of earnings from employment or self-employment on either a part-time or full-time basis. If an employee when required, fails within 30 days of the date of the request to submit such an affidavit or report, the employee's right to compensation for wage loss under *section 8105*

or 8106 is suspended until such time as the requested affidavit or report is received by the Office, at which time compensation will be reinstated retroactive to the date of suspension.”

The Office’s regulation which provides for suspension of benefits for failure to submit an affidavit or other report of earnings from employment or self-employment is consistent with the intent of the statute at section 8106(b). Appellant is essentially alleging that he should not be required to complete the Form CA-1032 as it violates his constitutional right to privacy. The Board has long recognized that it is not the proper forum to challenge the constitutionality of an act of Congress.¹ Adjudication of the constitutionality of congressional enactment is beyond the jurisdiction of administrative agencies.² Appellant also alleges that he need not complete the form because he believes he is receiving compensation pursuant to section 8105 of the Act, but the Board notes that 20 C.F.R. § 10.125(a) includes claimants in receipt of compensation under both sections 8105 and 8106. Appellant did timely submit a self-generated version of the Form CA-1032 which would have fulfilled his obligation if it had been a complete and accurate copy, but the Board notes that the three paragraphs of certification were missing from the copy submitted, and instead were replaced with appellant’s statement of objection, which did not meet the submission requirements.

Therefore, as appellant did not complete the Form CA-1032 affidavits reporting all employment and self-employment, as properly requested by the Office and as required by regulation, his compensation benefits were correctly suspended.

On appeal appellant urges that the Board should decide multiple matters not previously adjudicated by the Office, including his entitlement to a lump-sum payment, his status as being either temporarily or permanently disabled, the employment relatedness of his other diagnosed conditions including post-traumatic stress disorder, psychophysiological cardiac problems, stroke problems, psychophysiological gastrointestinal problems, and alleged Office negligence.³ The Board notes that the only formal final decision before it at the time of this appeal is the December 27, 1995 Office decision which addressed only the suspension of appellant’s benefits for failure to comply with the Office’s required completion of Form CA-1032. As the other issues have not been addressed by the Office in a final decision within one year of appellant’s appeal, they are not now before the Board for consideration.⁴

¹ *James A. Igo*, 48 ECAB ____ (Docket No. 96-307, issued November 19, 1997).

² *Id.*

³ Appellant’s claim was accepted for aggravation of hypertension, aggravation of a nervous disorder, and consequential hemorrhoids. Dates for cessation of the accepted aggravations have not been determined by the Office.

⁴ 20 C.F.R. § 501.2(c).

Consequently, the decision of the Office of Workers' Compensation Programs dated December 27, 1995 is hereby affirmed.

Dated, Washington, D.C.
May 15, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member