

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

C.W., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Los Angeles, CA, Employer)

**Docket No. 10-2290
Issued: July 11, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 13, 2010 appellant filed a timely appeal of an August 19, 2010 decision of the Office of Workers' Compensation Programs (OWCP), which suspended his compensation. 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.

ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits for failure to submit an EN1032 form when requested.

FACTUAL HISTORY

On April 14, 2003 appellant, then a 46-year-old transportation security screener, filed a traumatic injury claim alleging that he injured his back lifting while loading bags in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. OWCP accepted the claim for lumbosacral strain, tear of the right medial meniscus, affections of the shoulder region on the right and a sprain/strain of the acromioclavicular on the right.

Appellant was reemployed as a modified transportation security officer on January 22, 2008. In a decision of March 27, 2008, OWCP determined appellant's loss of wage-earning capacity. On May 19, 2008 appellant received a schedule award granting him a 10 percent permanent impairment of the right arm and 25 percent permanent impairment of the right leg. On June 5, 2008 OWCP amended the loss of wage-earning capacity decision to reflect his actual earnings as a modified transportation security officer.

On March 5, 2010 OWCP informed appellant that he was required to provide information requested in connection with his receipt of benefits under FECA and it enclosed a Form EN1032 for that purpose. Appellant was advised to completely answer all questions and return the form within 30 days or his benefits would be suspended. The letter was sent to his address of record.

In a July 13, 2010 letter sent to appellant's address of record, OWCP advised appellant that it had not received his response to its request for information. It again notified him that, if he did not complete and return the EN1032 form within 30 days, his compensation benefits would be suspended in accordance with 20 C.F.R. § 10.528. Appellant did not respond.

By decision dated August 19, 2010, OWCP suspended appellant's compensation benefits as of August 29, 2010 based on his failure to report earnings and employment information as required. It noted that, if appellant completed and returned an enclosed copy of the EN1032 form, his 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.²

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.³ 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.⁴

² 5 U.S.C. § 8106(b).

³ 20 C.F.R. § 10.528.

⁴ *Id.*; see also 20 C.F.R. § 10.525; *Robert A. Robbins*, Docket No. 05-728 (issued July 15, 2005).

ANALYSIS

In March 5 and July 13, 2010 letters, OWCP requested that appellant complete and return the enclosed EN1032 forms concerning the status of his employment and any dependents. It properly notified him that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. The record reflects that OWCP's letters were properly sent to appellant's address of record.⁵ Appellant did not respond. He did not return a completed CA-1032 form to OWCP within the time period allowed. As appellant failed to complete and return the information concerning his benefits as regulated by OWCP, it properly suspended his compensation pursuant to 20 C.F.R. § 10.528.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits based on his failure to timely submit a completed EN1032 form when requested.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 19, 2010 is affirmed.

Issued: July 11, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ Under the mailbox rule it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *See Joseph R. Giallanza*, 55 ECAB 186 (2003); *A.C. Clyburn*, 47 ECAB 153 (1995).