

FACTUAL HISTORY

This case was before the Board on prior appeals. By decision dated December 17, 2002, appellant was not entitled to a schedule award for her accepted psychiatric conditions.² In a decision dated October 2, 2006, the Board found that OWCP had not met its burden of proof to terminate compensation as of February 12, 2004.³ The history of the case as noted in the Board's prior decisions is incorporated herein by reference. Appellant continued to receive compensation for wage loss.

Appellant's address of record was a Houston, Texas street address. The record indicates that on December 14, 2010 OWCP received correspondence sent to appellant that had been returned as undeliverable. The envelope indicated that appellant's new address was a post office box in Dallas, Texas.

In a letter dated March 2, 2011, OWCP advised appellant that she must complete the enclosed Form EN1032 regarding employment, earnings and dependant information. It indicated that appellant had 30 days to submit the requested information or her compensation would be suspended. The letter was addressed to the Houston address.

By letter dated April 14, 2011, OWCP issued the same letter, with an EN1032 enclosed, to the post office box address in Dallas, Texas. On April 26, 2011 it received a request for copies of CA-7 forms (claim for compensation) appellant had submitted. Appellant reported her address as the Dallas post office box address.

By decision dated May 17, 2011, OWCP suspended appellant's compensation. It explained that they had not received the EN1032 form and her compensation would be retroactively restored upon submission of the requested information.

On August 9, 2011 OWCP received a July 28, 2011 letter addressed to OWCP's Branch of Hearings and Review. Appellant stated that she had been notified that her case status had been changed effective July 31, 2011 and she inquired as to whether there would be a change in the payment amount.

By decision dated September 8, 2011, OWCP held that appellant had requested a hearing and the request was denied. It found the hearing request was untimely, and stated that it had considered the matter and the issue could equally well be addressed through the reconsideration.

LEGAL PRECEDENT -- ISSUE 1

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.⁴

² Docket No. 02-1971 (issued December 17, 2002).

³ Docket No. 05-1805 (issued October 2, 2006).

⁴ 5 U.S.C. § 8106(b).

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

ANALYSIS -- ISSUE 1

In the present case, there was some confusion as to appellant's address of record. The address of record was a Houston street address, although there was indication in the record that as of December 2010 appellant was no longer living at the Houston address, but had a post office box in Dallas. Appellant did not notify OWCP of the new address until April 26, 2011.

The record indicates that OWCP sent a March 2, 2011 letter to the Houston address and an April 14, 2011 letter to the Dallas address. The letters included a blank EN1032 form. As noted above, an employee receiving compensation must periodically complete an affidavit regarding employment activity. If an employee does not submit the information within 30 days, her compensation is suspended until OWCP receives the requested report. In this case, there is no indication that appellant responded within 30 days of the April 14, 2011 request. Accordingly, her compensation was properly suspended.

On appeal, appellant submitted copies of the May 17, 2011 decision and other documents. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.⁷ The suspension of compensation is retroactively reinstated when a claimant submits the requested information to OWCP.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides in pertinent part:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”⁸

⁵ 20 C.F.R. § 10.528.

⁶ *Id.*; *see also* 20 C.F.R. § 525.

⁷ 20 C.F.R. § 501.2(c)(1).

⁸ 5 U.S.C. § 8124(b)(1).

As 5 U.S.C. § 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁹

ANALYSIS -- ISSUE 2

Appellant submitted a letter dated July 28, 2011 to the Branch of Hearings and Review. It is not clear whether he was requesting a hearing, but OWCP found that it was a request for a hearing before an OWCP hearing representative. As a hearing request, it was not made within 30 days of the May 17, 2011 OWCP decision. Accordingly, appellant was not entitled to a hearing as a matter of right.

The Board has held that OWCP, in its broad discretionary authority to administer FECA, has power to hold hearings in circumstances where no legal provision is made for such hearings, and OWCP must exercise its discretion in such circumstances.¹⁰ In this case, OWCP advised appellant that he could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of OWCP's discretionary authority.¹¹ The Board accordingly finds that OWCP properly denied a request for a hearing in this case.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation and properly denied a request for a hearing before an OWCP hearing representative.

⁹ See *William F. Osborne*, 46 ECAB 198 (1994).

¹⁰ *Mary B. Moss*, 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

¹¹ See *Mary E. Hite*, 42 ECAB 641, 647 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 8 and May 17, 2011 are affirmed.

Issued: April 6, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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