



September 4, 1987 OWCP accepted his claim for recurrent low back sprain. Appellant received wage-loss compensation and medical benefits.

Appellant also suffers from nonemployment-related schizophrenia and receives benefits from the Department of Veterans Affairs (VA) for a service-connected back injury while he was serving in Vietnam. He was in the service from April 2, 1975 through October 29, 1976.

On November 18, 2009 OWCP asked appellant to complete Form CA-1032 within 30 days to provide information regarding his earnings from the prior year. Appellant did not submit a timely response.

By decision dated January 19, 2010, OWCP suspended appellant's compensation benefits because he did not provide a complete Form CA-1032. OWCP informed him that, if he completed Form CA-1032, his compensation would be restored retroactively from the date of suspension. Appellant completed the form on February 20, 2010 which OWCP received on March 5, 2010. He noted that he did not work during the past 15 months. Appellant advised that he received benefits from the VA and compensation of "100 percent." He also stated that the percentage of his award has not increased since his OWCP injury.

In an April 27, 2010 letter, a VA service center manager stated that appellant had service-connected disability ratings for schizophrenia of 70 percent, limitation of motion of lumbar spine of 20 percent and hearing loss of 0 percent. By letter to appellant dated May 5, 2010, OWCP asked him to forward a letter to the VA asking for further information with regard to his veteran's benefits for the purpose of avoiding possible dual benefits. In a form completed on July 12, 2010, received July 16, 2010, the veterans' service representative noted that appellant received \$3,052.00 a month for his service-connected disability. With regard to a question as to whether there had been any increase in monthly benefits as a result of an on-the-job injury, he replied in the negative. The veterans' service representative noted that appellant received unemployment benefits.

On January 18, 2011 appellant requested reconsideration of the January 19, 2010 suspension of benefits. He noted that, as he submitted all documents, he requested retroactive restoration of compensation benefits as of February 14, 2010.

By decision dated April 26, 2011, OWCP denied modification of the decision dated January 19, 2010 suspending appellant's compensation. It noted that as appellant indicated on CA-1032 forms that he received compensation from the VA at the rate of 100 percent, and it was unknown what condition the VA award was increased from 80 percent (as indicated in a prior form) to 100 percent, OWCP was unable to assess the appropriate benefit level and was therefore unable to reinstate benefits.

### **LEGAL PRECEDENT**

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.<sup>2</sup> If an employee

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<sup>2</sup> 20 C.F.R. § 10.525; *Robert A. Robbins*, Docket No. 05-728 (issued July 15, 2005).

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.<sup>3</sup>

### **ANALYSIS**

By decision dated January 19, 2010, OWCP properly suspended appellant's compensation benefits because he did not provide a completed Form CA-1032. On March 5, 2010 it received the completed form. However, OWCP determined that reinstatement of benefits was not proper because appellant submitted evidence addressing the amount he received for his military service-connected benefits.

The Board finds that OWCP improperly failed to reinstate appellant's benefits effective March 5, 2010. In its January 19, 2010 decision, OWCP informed appellant that, if he completed and returned Form CA-1032, his compensation benefits would be restored retroactively to the date that they were suspended. Appellant completed the form and it was received by OWCP on March 5, 2010. As of March 5, 2010, he met his burden to submit Form CA-1032 and, pursuant to section 10.528 of the implementing regulations,<sup>4</sup> his benefits should have been reinstated at that time.<sup>5</sup>

### **CONCLUSION**

The Board finds that OWCP failed to properly reinstate appellant's benefits after he submitted his completed Form CA-1032.

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<sup>3</sup> *W.F.*, Docket No. 11-877 (issued March 9, 2012).

<sup>4</sup> 20 C.F.R. § 10.528.

<sup>5</sup> The Board notes that there is some confusion in the record as to whether appellant's veteran's benefits had increased. In its April 26, 2011 decision, OWCP noted that it was unable to assess his appropriate benefits level and was therefore unable to reinstate his benefits. As previously noted, appellant properly submitted the form on March 5, 2010 and at that point OWCP should have reinstated his benefits. If OWCP believes that he is receiving dual benefits, it is OWCP's responsibility to further develop the evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of Office of Workers' Compensation Programs dated April 26, 2011 is reversed.

Issued: May 24, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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