

FACTUAL HISTORY

On March 14, 1972 appellant, then a 45-year-old automobile mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 11, 1972 he sustained a back injury when he stepped off the curb and twisted his ankle. OWCP accepted the claim for low back strain and paid medical and wage-loss benefits.

On August 1, 2011 OWCP informed appellant that federal regulations required him to make an affidavit of any earnings and employment during the previous year and that a Form CA-1032 was enclosed for that purpose. It notified him that he had to completely answer all questions on the CA-1032 form and return the statement within 30 days or his benefits would be suspended. The letter was sent to appellant's address of record. Appellant did not respond.

By decision dated March 9, 2012, OWCP suspended appellant's compensation benefits, effective March 11, 2012, for failing to submit the CA-1032 form as requested. It noted that, if appellant completed and returned an enclosed copy of the CA-1032 form, his compensation benefits would be restored retroactively to the date they were suspended.

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.³

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.⁴ 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.⁵

ANALYSIS

On August 1, 2011 OWCP provided appellant with a Form CA-1032 and explained that federal regulations required him to complete it and answer all questions concerning his employment and earnings. 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. Appellant did not respond prior to the March 9, 2012 OWCP decision.

On appeal, appellant argues that he did not receive OWCP's August 1, 2011 letter and CA-1032 form. Under the mailbox rule, it is presumed, absent evidence to the contrary, that

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528.

⁵ *Id.*; see also 20 C.F.R. § 10.525.

notice mailed to an individual in the ordinary course of business was received by that individual. The presumption arises when the record shows that the notice was properly addressed and mailed.⁶ As the letter was sent to appellant's address of record and not returned, the Board finds that notice was received.

Based on the evidence of record,⁷ OWCP properly suspended appellant's compensation benefits pursuant to 20 C.F.R. § 10.528.⁸

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 compensation benefits for failing to submit information on a Form CA-1032, as required.

⁶ See *D.B.*, Docket No. 09-1434 (issued February 22, 2010); *Levi Drew, Jr.*, 52 ECAB 442 (2001); *Kimberly A. Raffle*, 56 ECAB 243 (1999).

⁷ The Board is limited to review of evidence that was before OWCP at the time of the March 9, 2012 decision. 20 C.F.R. § 501.2(c)(1). Evidence submitted by appellant after OWCP's March 9, 2012 decision cannot be considered by the Board.

⁸ *J.J.*, Docket No. 09-1724 (issued March 1, 2010). See also *James A. Igo*, 49 ECAB 189 (1997).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board