

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

D.A., Appellant)

and)

DEPARTMENT OF THE NAVY, MARINE)
CORPS DEVELOPMENT & EDUCATIONAL)
COMMAND, Quantico, VA, Employer)

Docket No. 12-989
Issued: October 22, 2012

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 6, 2012 appellant filed a timely appeal of the March 20, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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, effective April 8, 2012, for failure to report earnings and work activity.

FACTUAL HISTORY

This case has previously been before the Board with respect to the termination of appellant's monetary compensation.² In a November 4, 2002 decision, the Board reversed

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 02-1325 (issued November 4, 2002).

OWCP's June 14 and November 27, 2001 decisions which terminated appellant's compensation benefits effective July 15, 2001 on the grounds that he refused an offer of suitable work. The Board found that the record did not establish that he was capable of performing the duties of the position offered by the employing establishment and, thus, OWCP did not meet its burden of proof to terminate compensation. The facts and history as set forth in the Board's prior decision are incorporated by reference.³

By letter dated October 17, 2011, OWCP sent appellant a Form EN1032 and requested that he complete the form and return it within 30 days of the date of the letter. The form contained questions pertaining to his employment and income for the prior 15 months. OWCP advised appellant that if he did not submit the form within 30 days his compensation would be suspended under section 10.528 of its regulations.⁴ Appellant did not respond.

In a decision dated March 20, 2012, OWCP suspended appellant's compensation benefits effective April 8, 2012 on the grounds that he had failed to submit a completed Form EN1032 as requested.

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.⁵

Section 10.528 of OWCP's regulations provide:

"OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work or activity indicating an ability to work, which the employee has performed for the prior 15 months. 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 under 5 U.S.C. [§] 8105 [total disability] or 8106 [partial disability] 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

The record establishes that on October 17, 2011 OWCP sent appellant a correctly addressed request to complete and return an EN1032 form which asked for information about his

³ OWCP accepted that on June 14, 1983 appellant, then a 30-year-old labor, sustained a hematoma of the right and left scrotum and psychogenic pain disorder as a result of being hit in the scrotum by a rock while mowing the lawn at work. His employment was terminated on September 30, 1983 when his temporary appointment ended. OWCP had been paying appellant temporary total disability compensation since August 2, 1983.

⁴ 20 C.F.R. § 10.528. OWCP's October 17, 2011 correspondence was mailed to appellant's last known address of record.

⁵ 5 U.S.C. § 8106(b).

⁶ 20 C.F.R. § 10.528; *see also* R.C., Docket No. 12-135 (issued May 11, 2012).

employment and income for the prior 15 months. Additionally, appellant had been informed of the consequences, including suspension of compensation, for not fully completing and submitting the form in a timely manner. However, he did not respond. As appellant did not respond to OWCP's October 17, 2011 request for completion of a Form EN1032, it properly suspended his compensation effective April 8, 2012 pursuant to 20 C.F.R. § 10.528.

The Board notes that appellant submitted new evidence after OWCP issued its March 20, 2012 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.⁷ However, 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, effective April 8, 2012, for failure to report earnings and work activity.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ *Id.* at § 501.2(c)(1).