

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

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**K.W., Appellant**

**and**

**DEPARTMENT OF DEFENSE, CAMP  
LEJEUNE, North Carolina, Employer**

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**Docket No. 12-1484  
Issued: October 18, 2012**

*Appearances:*  
*Ernest J. Wright, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 28, 2012 appellant, through her attorney, filed a timely appeal of the January 20, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which suspended her compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 for failing to submit a Form CA-1032, as requested.

**FACTUAL HISTORY**

On December 1, 2010 appellant, then a 39-year-old language arts teacher, filed an occupational disease claim alleging that on March 5, 2008 her asthma and allergies were caused by her exposure to mold in her classroom. She stopped work on November 8, 2010. By letter dated May 27, 2011, OWCP accepted appellant's claim for temporary aggravation of allergic rhinitis and extrinsic asthma. It paid wage-loss compensation for temporary total disability.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On December 1, 2011 OWCP informed appellant that federal regulations required her to provide an affidavit of any earnings or employment during the previous year, and that a Form CA-1032 was enclosed for that purpose. It notified her that she had to completely answer all questions and return the statement within 30 days, otherwise her benefits would be suspended. The Form CA-1032 was sent to her address of record in North Carolina. No response was received.

In a January 20, 2012 decision, OWCP suspended appellant's entitlement to compensation for failing to submit the Form CA-1032, as requested.<sup>2</sup> It found that she did not reply to its December 1, 2011 correspondence. OWCP further noted that, when appellant completed the Form CA-1032, her compensation benefits would be restored retroactively, if entitled to benefits.

### **LEGAL PRECEDENT**

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. Pursuant to this authority, as well as her authority under 5 U.S.C. § 8149 to prescribe rules and regulations necessary for the administration and enforcement of FECA, the Secretary has promulgated the following regulations at 20 C.F.R. § 10.528:

“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.”

### **ANALYSIS**

On December 1, 2011 OWCP provided appellant with a Form CA-1032 and explained that federal regulations required her to complete it and provide information on any earnings or employment over the prior 15 months. It properly notified appellant that if she did not completely answer all questions and return the statement within 30 days, her benefits would be suspended and that once she completed the form compensation benefits would be reinstated if she were entitled to receive any. The form was sent to her address of record in North Carolina.<sup>3</sup>

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<sup>2</sup> In a prior decision dated December 7, 2011, OWCP terminated appellant's wage-loss compensation effective December 18, 2011 on the grounds that she refused an offer of suitable work under 5 U.S.C. § 8106(c). As the December 7, 2011 decision was issued more than 180 days prior to the filing of the current appeal, the Board has no jurisdiction to review it. *See* 20 C.F.R. § 501.3(e).

<sup>3</sup> Under the mailbox rule, it is presumed, absent evidence to the contrary, that 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. *See Levi Drew, Jr.*, 52 ECAB 442 (2001); *Kimberly A. Raffle*, 56 ECAB 243 (1999).

Appellant did not return the form within 30 days as requested. The Board finds, therefore, that OWCP properly suspended her right to compensation for wage loss under section 10.528 of the implementing regulations.<sup>4</sup>

On appeal, appellant submitted new evidence. The Board, however, cannot consider evidence that was not before OWCP at the time of the final decision.<sup>5</sup> Appellant may resubmit this evidence and legal contentions with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that OWCP properly suspended appellant's compensation for failing to submit a Form CA-1032, as requested.

**ORDER**

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

Issued: October 18, 2012  
Washington, DC

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

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

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

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<sup>4</sup> 20 C.F.R. § 10.528; *see F.D.*, Docket No. 08-2499 (issued September 9, 2009).

<sup>5</sup> *See* 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).