

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

S.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Zephyrhills, FL, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 11-577
Issued: September 25, 2012**

Appearances:

*Gregory G. Gay, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 6, 2011 appellant filed a timely appeal of the December 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which suspended her compensation.¹ Pursuant to the Federal Employees' Compensation Act² (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 benefits for failure to submit an EN1032 form when requested.

¹ Appellant died on February 12, 2011 after the filing of this appeal. As she properly filed the appeal in her lifetime, all that is needed is a substitute appellant to carry the appeal forward as the Board's jurisdiction was invoked during her lifetime. *See Albert F. Kimbrell*, 4 ECAB 662, 666 (1952). Accordingly, appellant's widower, who is represented by counsel, is recognized by this Board as the substitute appellant for purposes of carrying the appeal forward.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 20, 1991 appellant, then a 32-year-old letter carrier, filed an occupational disease claim alleging that she sustained stress as a result of her federal employment. She stopped work on June 4, 1991. By letter dated November 8, 1991, OWCP accepted appellant's claim for major depressive reaction. Appellant returned to work on January 6, 1992. OWCP paid her wage-loss compensation for subsequent periods of total disability.

On November 1, 2010 OWCP informed appellant that she was required to provide information requested in connection with her receipt of benefits under FECA and it enclosed a Form EN1032 for that purpose. Appellant was advised to completely answer all questions and return the form within 30 days or her benefits would be suspended in accordance with 20 C.F.R. § 10.528. OWCP sent the letter to her address of record. Appellant did not respond.

In a December 16, 2010 decision, OWCP suspended appellant's compensation benefits as of January 15, 2011 based on her failure to report earnings and employment information as required. It noted that, if she completed and returned an enclosed copy of the EN1032 form, her compensation benefits would be restored retroactively to the date they were suspended.

LEGAL PRECEDENT

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.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

In a November 1, 2010 letter, OWCP requested that appellant complete and return an enclosed EN1032 form concerning the status of her employment and any dependents. It properly notified her that, if she did not completely answer all questions and return the statement within 30 days, her benefits would be suspended. The record reflects that OWCP properly sent the

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528.

⁵ *Id.*; see also 20 C.F.R. § 10.525; *Robert A. Robbins*, Docket No. 05-728 (issued July 15, 2005).

letter to appellant's address of record.⁶ Appellant did not respond. She did not return a completed EN1032 form to OWCP within the time period allowed. As appellant failed to complete and return the information concerning her benefits as regulated by OWCP, it properly suspended her compensation effective January 15, 2011 pursuant to 20 C.F.R. § 10.528.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits based on her failure to timely submit a completed EN1032 form when requested.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁶ Under the mailbox rule it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *See Joseph R. Giallanza*, 55 ECAB 186 (2003); *A.C. Clyburn*, 47 ECAB 153 (1995).