

FACTUAL HISTORY

On November 30, 2001 appellant, then a 45-year-old pharmacy technician, filed a Form CA-2 alleging that she injured her lower back while in the performance of duty. OWCP accepted her occupational disease claim for lumbar sprain/strain. Following her release to light-duty work on March 21, 2005, appellant sustained a recurrence of disability on January 30, 2006.² She returned to modified assignment on September 18, 2006 and received partial wage-loss compensation accordingly.³

In a May 17, 2012 letter, OWCP informed appellant that she was required to complete, sign and return an enclosed Form EN-1032 detailing her earnings and employment in the previous 15 months. It further advised that her benefits would be suspended if it did not receive the document within 30 days. The letter was mailed to appellant's address of record.

Appellant submitted a Form EN-1032 that was signed on June 14, 2012. She stated that her federal employment ended in or around August or September 2011 and that she received disability retirement payments from the Office of Personnel Management (OPM) since November 2011.⁴

In a June 20, 2012 letter, OWCP advised appellant that she failed to identify in the Form EN-1032 whether she received disability retirement benefits from OPM and, if so, when the annuity began. It gave her 30 days to complete, sign and returned a revised Form EN-1032. Appellant did not respond.

By decision dated July 27, 2012, OWCP suspended appellant's compensation benefits effective July 29, 2012.⁵

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.⁶

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, that the employee has performed in the previous 15 months. If an employee who is required to file such a report

² OWCP accepted appellant's recurrence claim by decision dated March 7, 2006.

³ On September 25, 2007 OWCP found that the position of modified pharmacy technician was suitable in view of her partial disability and fairly and reasonably represented her wage-earning capacity.

⁴ In a May 2, 2012 letter, OPM indicated that it was still processing appellant's application for benefits. Meanwhile, she received an interim payment for the period November 1, 2011 to April 30, 2012.

⁵ Appellant submitted new evidence after issuance of the July 27, 2012 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

⁶ 5 U.S.C. § 8106(b).

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.⁷

ANALYSIS

The Board finds that OWCP improperly suspended appellant's compensation benefits.

In a May 17, 2012 letter mailed to appellant's address of record, OWCP informed her that she needed to complete, sign and return a Form EN-1032 and that failure to return the requested document within 30 days would lead to the suspension of her compensation benefits. Appellant completed, signed and returned a Form EN-1032 dated June 14, 2012, specifying that she received payments from OPM for disability retirement beginning November 2011. However, OWCP asserted that she failed to provide this exact information in a June 20, 2012 letter and suspended her benefits effective July 29, 2012. In view of this error, the case shall be remanded for further development on appropriate compensation benefits.⁸

CONCLUSION

The Board finds that OWCP improperly suspended appellant's compensation benefits.

⁷ 20 C.F.R. § 10.528. *See also* 20 C.F.R. § 10.525.

⁸ *W.F.*, Docket No. 11-877 (issued March 9, 2012).

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2012 decision of the Office of Workers' Compensation Programs be reversed and the case remanded for further action consistent with this decision of the Board.

Issued: January 25, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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