

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

N.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Houston, TX, Employer)

**Docket No. 12-1934
Issued: March 11, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 20, 2012 appellant filed a timely appeal from a July 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.²

ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits for failure to submit an EN1032 form when requested.

¹ 5 U.S.C. § 8101 *et seq.*

² The record also contains a July 23, 2012 OWCP decision. Appellant did not appeal this decision to the Board.

FACTUAL HISTORY

This case has previously been before the Board. In a January 22, 2009 decision, the Board affirmed a May 21, 2007 decision finding that appellant had no more than 41 percent permanent impairment of the right arm, for which he received a schedule award.³ The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.⁴ Appellant received wage-loss compensation and medical benefits and was placed on the periodic rolls. He had been regularly completing EN1032 forms.

On April 7, 2012 appellant was forwarded the EN1032 form for the next reporting period and provide information regarding his earnings. He was advised that his benefits would be suspended pursuant to 20 C.F.R. § 10.528 if a completed EN1032 form was not received by OWCP within 30 days. No response was received.

On May 8, 2012 OWCP made a second request that appellant complete the required form within 30 days. Appellant was advised that his benefits would be suspended pursuant to 20 C.F.R. § 10.528 if the completed form was not received by OWCP within 30 days.

On May 17, 2012 appellant submitted a partially completed EN1032 form. He submitted only pages two through six, but not Part A -- Employment. Appellant noted on page three, Part C -- Dependents, that he was married but his wife did not live with him.

In a letter dated June 12, 2012, OWCP informed appellant of the missing page. It further noted that, as his wife did not live with him, he did not make regular direct payments for her support and was not claiming other dependents, he would not be eligible for the 75 percent compensation rate. OWCP instructed appellant to provide updated information on his marital status and to submit page one of the EN1032. Appellant was advised that his benefits would be suspended pursuant to 20 C.F.R. § 10.528 if the information was not received by OWCP within 30 days. No response was received.

By decision dated July 20, 2012, OWCP suspended appellant's wage-loss benefits effective July 29, 2012. It informed him that his compensation would be restored retroactively from the date of suspension once the information was received.⁵

³ On or before August 9, 2001 appellant, a letter carrier, developed right carpal tunnel syndrome while performing his work duties. OWCP accepted the claim for right tenosynovitis and right carpal tunnel syndrome and authorized right tenosynovitis and right carpal tunnel releases, which were performed on July 31, 2001. It also accepted acute osteomyelitis of the fingers on the right hand, partial amputation of fingers on the right hand, staphylococcal infection, abscess and open wound of the right finger. Appellant stopped work on July 9, 2001 and returned to a limited-duty position in October 2002.

⁴ Docket No. 08-161 (issued January 22, 2009).

⁵ On July 20, 2012 OWCP again requested that appellant complete an EN1032 form within 30 days. The Board notes that appellant submitted a completed EN1032 form with his appeal. The Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *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). This decision does not preclude appellant from submitting this form to OWCP.

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

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.⁷ 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.⁸ At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁹

ANALYSIS

OWCP requested that appellant submit an EN1032 form with respect to his employment activity performed for the prior 15 months. It requested the information by letters dated April 7, May 8 and June 12, 2012 sent to his address of record advising him to submit the form within 30 days or his compensation could be suspended. The record reveals that, on May 17, 2012, appellant submitted a partially complete EN1032 which was missing page one, Part A -- Employment.

In a letter dated June 12, 2012, OWCP informed appellant of the missing information and requested clarification of his marital status to determine the proper compensation rate. The record establishes that he did not respond prior to July 20, 2012.

Based on the evidence of record, OWCP properly suspended appellant's compensation effective July 29, 2012 pursuant to 20 C.F.R. § 10.528.

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 based on his failure to timely submit a completed EN1032 form when requested.

⁶ 5 U.S.C. § 8106(c).

⁷ 20 C.F.R. § 10.528.

⁸ See *N.G.*, 12-981 (issued December 4, 2012); *Lucille A. Pettaway*, 55 ECAB 228 (2004); *Demetrius Beverly*, 53 ECAB 305 (2002).

⁹ *Supra* note 6.

ORDER

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

Issued: March 11, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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