

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

R.K., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
FACILITIES ENGINEERING COMMAND
STATIONS, San Diego, CA, Employer**

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**Docket No. 13-72
Issued: March 22, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2012 appellant filed a timely appeal from a July 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) suspending his compensation benefits. 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 for failing to submit a Form EN1032, as requested.

FACTUAL HISTORY

On January 23, 1997 appellant, then a 50-year-old rigger, filed a traumatic injury claim Form CA-1 alleging that on January 22, 1997 he sustained a low back strain when he was

¹ 5 U.S.C. § 8101 *et seq.*

moving two drawer safes down the stairs. OWCP accepted the claim for sprain of the lumbar region and paid medical and wage-loss benefits.

On January 10, 2012 OWCP informed appellant that federal regulations required him to make an affidavit of any earnings and employment during the previous year and that a Form EN1032 was enclosed for that purpose. It notified him that he had to completely answer all questions on the Form EN1032 and return the statement within 30 days or his benefits would be suspended. On February 29, 2012 OWCP made a second request and enclosed a Form EN1032. The letters were sent to appellant's address of record. Appellant did not respond.

By decision dated July 27, 2012, OWCP suspended appellant's compensation benefits, effective July 28, 2012, for failing to submit the Form EN1032 as requested. It noted that, if he completed and returned an enclosed copy of the Form EN1032, his compensation benefits would be restored retroactively to the date they were suspended.²

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.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

On January 10, 2012 OWCP provided appellant with a Form EN1032 and explained that federal regulations required him to complete it and answer all questions concerning his employment and earnings. It properly notified him that if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. On

² The Board and OWCP cannot simultaneously exercise jurisdiction over the same issue. *See* 20 C.F.R. § 501.2(c)(3). OWCP's decision issued while the Board has jurisdiction over the matter in dispute is null and void. *See L.I.*, Docket No. 12-1104 (issued December 3, 2012); *M.T.*, Docket No. 12-1419 (issued July 17, 2012); *Lawrence Sherman*, 55 ECAB 35 (2004); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). Appellant filed an appeal with the Board on October 10, 2012. On October 17, 2012 he submitted a Form EN1032 to OWCP. By decision dated November 14, 2012, OWCP retroactively reinstated appellant's benefits effective July 29, 2012. Because it issued its November 14, 2012 decision after the Board had obtained jurisdiction, that decision is null and void.

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528.

⁵ *Id.*; *see also id.* at § 10.525.

February 29, 2012 OWCP submitted a second request. The record does not establish that appellant responded prior to the July 27, 2012 OWCP decision.

Based on the evidence of record, the Board finds that OWCP properly suspended appellant's compensation benefits effective July 28, 2012 pursuant to 20 C.F.R. § 10.528.⁶

As previously noted, appellant submitted new evidence on appeal. The Board, however, cannot consider evidence that was not before OWCP at the time of the final decision.⁷ 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 for failing to submit information on a Form EN1032, as required.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁶ *J.J.*, Docket No. 09-1724 (issued March 1, 2010). See also *James A. Igo*, 49 ECAB 189 (1997).

⁷ See 20 C.F.R. § 501.2(c) (1); *J.T.*, 59 ECAB 293 (2008).