

that he sustained a recurrence of disability on or about May 5, 2003 causally related to his accepted employment injuries of January 11, 1995.² The factual history of the case as set forth in the Board's decision is incorporated herein by reference.³

On October 1, 2012 OWCP informed appellant that federal regulations required him to provide an affidavit of any earnings or employment during the previous 15 months and that a Form CA-1032 was enclosed for that purpose. It notified him that he had to completely answer all questions on the form and return it within 30 days or his benefits would be suspended. The letter was sent to appellant's address of record. He did not respond.

In an informational letter also dated October 1, 2012, OWCP informed appellant that the yearly updated forms he submitted for years 2009, 2010 and 2011 were not the original forms mailed to him every year on his birthday month.⁴ It advised that the duplicate copies were not sufficient for their purposes as the forms were considered legal documents and could not be duplicated. OWCP requested that appellant complete CA-1032 forms enclosed for 2009, 2010 and 2011 in their entirety and sign with his original signature. It noted that the original 2012 form would also need to be completed in its entirety and signed as well. Appellant was requested to return the forms within 30 days or his benefits would be suspended. He did not respond.

By decision dated November 5, 2012, OWCP suspended appellant's compensation benefits, effective November 18, 2012, for failing to submit the 2012 CA-1032 form as requested. It noted that, if appellant completed and returned an enclosed copy of the CA-1032 form, his compensation benefits would be restored retroactively to the date suspended.

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.⁵

² Docket No. 06-338 (issued November 15, 2006); *petition for recon. denied* (issued April 17, 2007).

³ The record reflects that appellant, a program analyst (retired), sustained several employment injuries which have been combined and placed in the current claim. These include a May 15, 1992 traumatic injury accepted for medial meniscus tear of right knee; a January 11, 1995 traumatic injury accepted for right affections of shoulder; anterior horn of medial meniscus right knee, left knee contusion and depression; and a March 5, 2000 occupational disease claim accepted for bilateral carpal tunnel syndrome. Other conditions subsequently accepted include mild erectile dysfunction compounded by psychogenic erectile dysfunction. OWCP authorized surgery and paid appropriate benefits for: right knee tear of the medial meniscus -- internal derangement on October 13, 1992; chondromalacia left patella on July 16, 1996; right shoulder impingement syndrome on September 24, 1996; right carpal tunnel release on April 6, 2000; right median nerve repair/neuroma right hand on November 15, 2001; ulnar nerve neuropathy left elbow/left carpal tunnel release on September 27, 2002; and left shoulder arthroscopy with debridement on December 2, 2003.

⁴ CA-1032 and EN1032 forms cover the period 15 months prior to the date appellant completes and signs the form. The record contains facsimile of forms completed by appellant on November 15, 2010 and October 31, 2011.

⁵ 5 U.S.C. § 8106(b).

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.⁶ 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.⁷

ANALYSIS

On October 1, 2012 OWCP provided appellant with a Form CA-1032 and explained that federal regulations required him to complete it and answer all questions concerning his employment or 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. Appellant did not respond prior to the November 5, 2012 OWCP decision.

On appeal, appellant stated that he had not been at his Florida residence since November 7, 2012, due to the unexpected passing of a family member, and he did not receive the forwarded mail until two to three weeks later. The record reflects that OWCP properly sent the letter and forms to appellant's address of record.⁸ Appellant did not respond or otherwise advise OWCP of his circumstances. Furthermore, he did not return a completed CA-1032 form to OWCP within the time period allowed. Appellant also contended that the suspension of his benefits violated due process, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976). The court in *Eldridge* held that a claimant who was in receipt of benefits could not have those benefits terminated without procedural due process. Unlike the claimant in *Eldridge*, appellant's benefits were not terminated but were suspended until such time he submitted a completed and signed CA-1032 form to OWCP. The Board notes that OWCP followed its procedures to suspend benefits when a claimant fails to complete and submit a CA-1032 form within 30 days. Appellant further contends that his previously submitted CA-1032 forms for 2009 and 2010 should not be denied legal effect, as noted in OWCP's October 1, 2012 letter, as an electronic transmission, including a facsimile copy of a hand-signature, is a valid form of authentication. OWCP's October 1, 2012 letter pertaining to the CA-1032 forms for the years 2009 to 2011 however was only an informational letter. Appellant's benefits were suspended based on his failure to complete the 2012 CA-1032 form.

⁶ 20 C.F.R. § 10.528.

⁷ *Id.*; *see also id.* at § 10.525.

⁸ 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). The record is devoid of any correspondence from appellant informing OWCP that his mail was being forwarded due to a family emergency.

Based on the evidence of record,⁹ the Board found that OWCP properly suspended appellant's compensation benefits pursuant to 20 C.F.R. § 10.528.¹⁰

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 CA-1032, as required.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2013
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

⁹ The Board is limited to review of evidence that was before OWCP at the time of the November 5, 2012 decision. 20 C.F.R. § 501.2(c)(1). Evidence submitted by appellant after OWCP's November 5, 2012 decision cannot be considered by the Board.

¹⁰ *J.J.*, Docket No. 09-1724 (issued March 1, 2010). *See also James A. Igo*, 49 ECAB 189 (1997).