

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

J.J., Appellant)	
)	
and)	Docket No. 13-1067
)	Issued: September 20, 2013
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
Dallas, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 27, 2013 appellant filed a timely appeal from a November 27, 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.

ISSUE

The issue is whether OWCP properly suspended appellant’s compensation benefits for failure to timely submit a CA-1032 form.

FACTUAL HISTORY

On April 11, 2005 appellant, then a 43-year-old nurse, filed a traumatic injury claim alleging that she sustained a low back strain on March 31, 2005. She stated that she had to step

¹ 5 U.S.C. § 8101 *et seq.*

on a stool to access the computer keyboard and, when the automatic drawer popped open, it hit her leg causing her to step backward and fall off the stool. OWCP accepted the claim for lumbosacral strain and back contusion. It eventually placed appellant on its periodic compensation rolls.

On September 10, 2012 OWCP informed appellant that she was required to provide information in connection with her receipt of benefits under FECA and it enclosed a Form CA-1032. Appellant was advised to complete all questions and return the form within 30 days or her benefits would be suspended. The letter was sent to her last known address.

In an October 26, 2012 letter sent to appellant's address of record, OWCP advised appellant that it had not received the completed Form CA-1032. It again notified her that, if she did not complete and return the enclosed Form CA-1032 within 30 days, her compensation benefits would be suspended in accordance with 20 C.F.R. § 10.528.

Appellant did not respond.

By decision dated November 27, 2012, OWCP suspended appellant's compensation benefits as of November 18, 2012 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 CA-1032 form, her compensation benefits would be restored retroactively to the date they were suspended.²

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

² On December 7, 2012 OWCP received appellant's completed CA-1032 form dated September 17, 2012.

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).

ANALYSIS

In September 10 and October 26, 2012 letters, OWCP requested that appellant complete and return the enclosed CA-1032 forms 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's letters were properly sent to appellant's last known address. Appellant did not respond.⁶ She did not return a completed CA-1032 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 pursuant to 20 C.F.R. § 10.528.

On appeal appellant contends that her completed CA-1032 form was received by OWCP on December 7, 2012. While she argues that her compensation benefits should be retroactively restored, the Board lacks jurisdiction to review such evidence for the first time on appeal.⁷ The Board's jurisdiction is limited to evidence that was before OWCP at the time of its final decision.

Appellant may submit new evidence or argument with a written request for reconsideration 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 her failure to timely submit a completed CA-1032 form when requested.

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). *D.A.*, Docket No. 12-989 (issued October 22, 2012).

⁷ *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

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

Issued: September 20, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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