

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

M.M., Appellant)
and) Docket No. 16-0058
U.S. POSTAL SERVICE, POST OFFICE,) Issued: February 5, 2016
Suitland, MD, Employer)

)

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 13, 2015 appellant filed a timely appeal from a July 28, 2015 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 effective July 26, 2015 for failure to submit a Form EN1032, as requested.

On appeal appellant asks that the Board reconsider its previous decisions issued December 2, 2010, Docket Nos. 10-419 and 10-1526. She particularly requests that the Board review her pay rate for compensation purposes.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated April 20, 1998, the Board set aside a September 11, 1995 OWCP decision with respect to appellant's pay rate for compensation purposes.² By decision dated May 6, 1998, the Board determined that an OWCP decision regarding an overpayment of compensation was not in posture for decision until the issue of appellant's pay rate had been resolved.³ In a February 20, 2001 decision, the Board found that OWCP properly determined appellant's pay rate for compensation purposes as the pay rate on the date of injury, March 20, 1985. The Board further found that appellant was not entitled to waiver of recovery of an overpayment of compensation in the amount of \$1,206.22 and that OWCP had properly denied appellant's request for merit review.⁴ By decision dated June 18, 2003, the Board found that appellant did not have more than 20 percent permanent impairment of her right upper extremity.⁵ In a May 15, 2006 decision, the Board found that OWCP properly computed appellant's retroactive compensation and that OWCP had properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).⁶

By decision dated December 2, 2010, the Board found that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) because it was untimely filed and failed to demonstrate clear evidence of error, and affirmed a May 7, 2009 OWCP decision.⁷ In a second December 2, 2010 decision, the Board affirmed a January 14, 2010 OWCP decision and found that OWCP had properly reduced appellant's compensation under section 8113(b) of FECA for failing, without good cause, to cooperate with vocational rehabilitation.⁸ In an order dated February 10, 2012, the Board dismissed appellant's petition for reconsideration of its December 2, 2010 decisions as it was untimely. In a September 17, 2012 decision, the Board found that appellant had failed to meet her burden of proof to establish more than 20 percent impairment of the right arm, for which she had received schedule awards.⁹ The facts and circumstances following the previous Board decisions and orders are incorporated herein by reference.

Appellant, who is now 64 years old, was employed as a distribution clerk and filed a claim for a March 20, 1985 right shoulder injury that occurred while she was throwing mail. OWCP accepted the claim for strain, chronic tendinitis, acromioclavicular arthrosis, arthritis,

² Docket No. 96-460 (issued April 20, 1998).

³ Docket No. 97-776 (issued May 6, 1998).

⁴ Docket No. 99-2221 (issued February 20, 2001), *petition for recon. denied* (issued July 31, 2001).

⁵ Docket No. 02-2350 (issued June 18, 2003).

⁶ Docket No. 05-832 (issued May 15, 2006).

⁷ Docket No. 10-419 (issued December 2, 2010).

⁸ Docket No. 10-1526 (issued December 2, 2010).

⁹ Docket No. 12-1360 (issued September 17, 2012).

traumatic arthropathy of the right shoulder, and right upper extremity mononeuritis. Appellant had right shoulder surgery in December 1985 and worked intermittently until May 15, 1989. She has not returned to work. On August 8, 1992 OWCP accepted that appellant sustained employment-related right carpal tunnel syndrome, and underwent a right carpal tunnel release on September 25, 2001. Appellant has been on the periodic compensation rolls since 1986.

In a January 29, 2015 letter, OWCP informed appellant, as it had informed her each year she had been on the periodic rolls, that federal regulations required her to provide an affidavit of earnings and/or employment during the previous year, and that a Form EN1032 was enclosed for that purpose. It notified her that she had to fully answer all questions on the form and return the statement within 30 days or her benefits would be suspended. The letter was mailed to appellant's address of record in Lanham, Maryland. Appellant did not return the required EN1032 form.¹⁰

By decision dated July 28, 2015, OWCP suspended appellant's compensation benefits, effective July 26, 2015, for failing to meet the requirements associated with receiving compensation on the periodic rolls. It noted that her compensation benefits would be restored retroactively to the date they were suspended if she completed and returned an enclosed copy of the form.

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.¹¹

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.¹² 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.¹³

¹⁰ Following the January 29, 2015 notice, in correspondence dated March 18, May 7, and July 22, 2015, appellant's senator forwarded appellant's inquiries regarding her pay rate. None of the inquiries or information forwarded was in regard to the EN1032 form. Appellant telephoned OWCP on May 11, 2015 regarding her health benefits.

¹¹ *Supra* note 1; 20 C.F.R. § 10.528; *see P.M.*, Docket No. 15-0674 (issued July 10, 2015).

¹² *Id.*

¹³ *P.M., supra* note 11.

ANALYSIS

On January 29, 2015 OWCP provided appellant with a EN1032 form. It explained that federal regulations required her to complete the form and answer all questions concerning her employment or earnings while she was on the periodic rolls. OWCP properly notified appellant 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 the letter was properly sent to her address of record. Appellant failed to respond prior to the July 28, 2015 OWCP decision. Based on the evidence of record, the Board finds that OWCP properly suspended her compensation benefits pursuant to 20 C.F.R. § 10.528.¹⁴

As to appellant's request that the Board reconsider its December 2, 2010 decisions, section 501.7(a) of its procedures provide that any petition for reconsideration of a Board decision must be filed within 30 days from the date of issuance of that decision.¹⁵ In the instant case, appellant's current appeal was received by the Board on October 13, 2015, which is more than 30 days after the issuance of the Board's decisions on December 2, 2010. Thus, appellant's request for review of the Board's December 2, 2010 decisions does not constitute a timely petition for reconsideration of those appeals.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits effective July 26, 2015 for failure to submit a Form EN1032, as required.

¹⁴ *Supra* note 11.

¹⁵ 20 C.F.R. § 501.7(a). *See also* 20 C.F.R. § 501.6(d) (the decisions and orders of the Board are final as to the subject matter appealed, and such decisions are not subject to review, except by the Board; the decisions and orders will be final upon the expiration of 30 days from the date of issuance unless the Board has fixed a different period of time therein).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board