

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

C.C., Appellant)	
)	
and)	Docket No. 17-0043
)	Issued: June 15, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Suisun, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 14, 2016 appellant filed a timely appeal from a July 29, 2016 merit decision and a September 14, 2016 nonmerit 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.

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's compensation benefits, effective July 29, 2016, for failure to complete an EN1032 form as requested; and (2) whether it properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant, then a 27-year-old mail carrier, developed dysthymic disorder. It subsequently placed her on the periodic compensation rolls.²

OWCP periodically sent appellant letters (Form CA-1032) requesting that she complete an enclosed form (Form EN1032) with regard to her employment activity, if any, within the past 15 months.³ By Form CA-1032 dated June 9, 2015, it informed her that federal regulations required her to make an affidavit relative to any earnings or employment during the previous year and that an EN1032 form was enclosed for that purpose. OWCP notified appellant that she was required to fully answer all questions on the form and return the statement within 30 days or her benefits would be suspended. The letters were mailed to appellant's address of record. No response was received by OWCP.

By decision dated July 29, 2016, OWCP suspended appellant's compensation benefits, effective that date, for failing to complete an EN1032 form as requested. It noted that, if she completed and returned an enclosed copy of the form, her compensation benefits would be restored retroactively to the date they were suspended.

On August 22, 2016 appellant requested reconsideration. She submitted an EN1032 form dated August 15, 2016.

In response, OWCP retroactively reinstated appellant's compensation benefits, effective July 29, 2016.

By decision dated September 14, 2015, OWCP denied appellant's request for reconsideration of the merits, finding that she did not submit relevant and pertinent new evidence, nor did she show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP. It explained that the July 29, 2016 suspension decision became moot after it reinstated appellant's compensation benefits effective July 29, 2016, thus, the case did not warrant a merit review because the evidence submitted was irrelevant.

LEGAL PRECEDENT -- ISSUE 1

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.⁴

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

² By decision dated May 7, 1999, OWCP adjusted appellant's compensation to reflect her wage-earning capacity due to her reemployment as a modified medical receptionist, effective May 23, 1999.

³ The EN1032 form also requests information with respect to dependents, receipt of other federal benefits, third-party settlements, and fraud offenses.

⁴ 5 U.S.C. § 8106(b).

to work, which the employee has performed for the prior 15 months.⁵ 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.⁶

ANALYSIS -- ISSUE 1

On June 9, 2015 OWCP provided appellant with an EN1032 form. It notified her that federal regulations required her to complete the form and answer all questions concerning her employment or earnings. OWCP properly notified her that, if she did not completely answer all of the questions and return the statement within 30 days, her benefits would be suspended. The record reflects that OWCP's letter was properly sent to appellant's address of record.⁷ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee.

The record indicates that appellant failed to timely submit the EN1032 form within 30 days.⁸ Appellant was receiving wage-loss compensation and she was therefore required to complete the EN1032 form. Her failure to file an EN1032 form within 30 days resulted in the suspension of compensation until OWCP received the completed form. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective July 29, 2016, pursuant to 20 C.F.R. § 10.528.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right, it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.¹⁰ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹¹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must

⁵ 20 C.F.R. § 10.528. *See also* A.H., Docket No. 15-0241 (issued April 3, 2015).

⁶ *Id.*; *see also* 20 C.F.R. § 10.525.

⁷ *See Kenneth E. Harris*, 54 ECAB 502, 505 (2003); *J.J.*, Docket No. 13-1067 (issued September 20, 2013).

⁸ *See I.S.*, Docket No. 15-0800 (issued July 7, 2015) (where the employee stated that she did not complete the forms in a timely manner because she has health issues and was hospitalized for a short period on two occasions, the Board found that she failed to timely submit the EN1032 form within 30 days and that her compensation would be reinstated retroactive to the date of suspension once she properly submitted the requested information to OWCP).

⁹ *See M.W.*, Docket No. 15-0507 (issued June 18, 2015).

¹⁰ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

¹¹ *See Annette Louise*, 54 ECAB 783, 789-90 (2003).

be received by OWCP within one year of the date of that decision.¹² When a claimant fails to meet one of the standards below, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹³

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁴

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,¹⁵ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶

ANALYSIS -- ISSUE 2

In support of her August 22, 2016 reconsideration request, appellant submitted an EN1032 form dated August 15, 2016. The Board finds that submission of this form did not require reopening appellant's case for merit review. The record establishes that OWCP had retroactively reinstated appellant's compensation benefits, effective July 29, 2016. Thus, the Board finds the July 29, 2016 suspension decision was rendered moot and this evidence became irrelevant to the issue before OWCP and insufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. Because appellant only submitted irrelevant evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and she is not entitled to further merit review.¹⁷

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits, effective July 29, 2016, for failure to complete an EN1032 form as requested. The Board further

¹² 20 C.F.R. § 10.607(a).

¹³ *Id.* at § 10.608(b).

¹⁴ *Id.* at § 10.606(b)(3).

¹⁵ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹⁶ *Id.*

¹⁷ *See L.H.*, 59 ECAB 253 (2007).

finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 14 and July 29, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 15, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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