



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that, on February 8, 1984, appellant, then a 51-year-old ambulance driver, sustained low back strain and an L3-4 disc protrusion. He stopped work in February 1984 and received wage-loss compensation from OWCP for total disability. By decision dated March 27, 2000, OWCP reduced appellant's compensation after finding that he had the capacity to earn wages as a security guard.

In a July 22, 2010 decision, the Board set aside a September 15, 2009 OWCP decision, finding that appellant was not entitled to premium pay for holidays in his pay rate for compensation purposes.<sup>3</sup> The Board remanded the case for OWCP to further develop the factual evidence to determine whether he was entitled to premium pay for holiday work.

OWCP periodically sent appellant letters (Form CA-1032) requesting that he complete an enclosed form (Form EN1032) with regard to his earnings and employment activity, if any, within the past 15 months.<sup>4</sup>

On April 19, 2017 OWCP informed appellant that federal regulations required him to make an affidavit regarding any earnings received or employment performed during the previous 15 months and that an EN1032 form was enclosed for that purpose.<sup>5</sup> It advised that he had to completely answer all questions on the form and that his benefits would be suspended pursuant to 20 C.F.R. § 10.528 if a completed form was not received by OWCP within 30 days. OWCP mailed the letter to appellant's address of record. Appellant did not respond to OWCP's request.

By decision dated June 7, 2017, OWCP suspended appellant's wage-loss compensation, effective June 24, 2017, for failing to submit the EN1032 form as requested. It advised that if he completed and returned an enclosed copy of the EN1032 form, it would restore his wage-loss compensation retroactive to the date of suspension.

Appellant, by letter dated June 26, 2017, requested a review of the written record before an OWCP hearing representative. He related that he did not complete the form because he was awarded compensation which he maintained did not qualify as income. Appellant contended that OWCP failed to properly include holiday pay, cost-of-living adjustments, and night differential in his compensation. He questioned OWCP's authority to stop paying him wage-loss compensation.

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<sup>2</sup> Docket No. 10-0147 (issued July 22, 2010).

<sup>3</sup> *Id.*

<sup>4</sup> The EN1032 also requests information with respect to dependents, receipt of other federal benefits, third-party settlements, and fraud offenses.

<sup>5</sup> By decision dated May 31, 2016, OWCP had previously suspended appellant's wage-loss compensation benefits for failure to submit an April 14, 2016 EN1032 form. He submitted the EN1032 form on June 20, 2016 and OWCP reinstated his wage-loss compensation.

Appellant submitted an excerpt from a form indicating that compensation payments were not subject to federal income tax.

By decision dated September 27, 2017, an OWCP hearing representative affirmed the June 7, 2017 decision. She noted that matters regarding appellant's pay rate for compensation purposes were not currently at issue and that OWCP complied with its procedures in suspending his wage-loss compensation under section 10.528 for failing to submit a completed EN1032 form.

### **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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS**

The Board finds that OWCP properly suspended appellant's compensation benefits effective June 24, 2017 due to his failure to complete the EN1032 form as requested.

On April 19, 2017 OWCP provided appellant with the EN1032 form. It notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. OWCP properly notified appellant that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended.

Appellant failed to timely submit the EN1032 form within 30 days. OWCP paid him wage-loss compensation and thus he was required to complete the EN1032 form.<sup>9</sup> The failure to file an EN1032 form within 30 days of the request results in the suspension of compensation.<sup>10</sup> The Board

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<sup>6</sup> 5 U.S.C. § 8106(b).

<sup>7</sup> 20 CFR § 10.528; *see also* A.H., Docket No. 15-0241 (issued April 3, 2015).

<sup>8</sup> *Id.*; *see also* 20 CFR § 10.525.

<sup>9</sup> *See* A.S., Docket No. 17-1530 (issued November 7, 2017).

<sup>10</sup> *See supra* note 6.

thus finds that OWCP properly suspended appellant's wage-loss compensation benefits effective June 24, 2017 pursuant to 20 C.F.R. § 10.528.<sup>11</sup>

Following OWCP's suspension of his compensation, appellant requested a review of the written record, arguing that his compensation from OWCP did not constitute income. He also raises this argument on appeal. As noted, however, appellant is required to submit the EN1032 form regarding any earnings or employment during the previous 15 months or have his benefits suspended under section 10.528.<sup>12</sup> His benefits may be retroactively reinstated once he submits the EN1032 form to OWCP.

### **CONCLUSION**

The Board finds that OWCP properly suspended appellant's compensation benefits, effective June 24, 2017, due to his failure to submit a completed EN1032 form as requested.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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

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<sup>11</sup> See *P.M.*, Docket No. 16-0382 (issued May 19, 2016); *M.W.*, Docket No. 15-0507 (issued June 18, 2015).

<sup>12</sup> *Id.*