

ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits, effective November 11, 2018, for failure to complete and return a Form EN1032 as requested.

FACTUAL HISTORY

Appellant, a food inspector, filed an occupational disease claim (Form CA-2) alleging injuries resulting from factors of her federal employment.³ OWCP accepted the claim for tendinitis, adhesive capsulitis, and lateral epicondylitis of bilateral shoulders. It paid appellant compensation on the supplemental rolls based on her wage-earning capacity.

OWCP periodically sent appellant letters (Form CA-1032) requesting that she complete an enclosed form (Form EN1032) with regard to her employment and volunteer work within the past 15 months, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.⁴ By Form CA-1032 dated October 4, 2018, 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 letter was mailed to her address of record.

Appellant submitted a completed and signed EN1032 form dated October 24, 2018 and received by OWCP on November 5, 2018.

By decision dated November 7, 2018, OWCP suspended appellant's wage-loss compensation benefits, effective November 11, 2018, 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.

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.⁵

³ The Board notes that the Form CA-2 is not contained in the case record.

⁴ By decision dated August 31, 2007, OWCP suspended appellant's wage-loss compensation benefits, effective September 2, 2007, for failing to submit an EN1032 form as requested. By decision dated November 13, 2013, it again suspended her wage-loss compensation benefits, effective November 17, 2013, because she failed to submit an additional EN1032 form as requested. An OWCP hearing representative, by decision dated December 31, 2013, set aside the November 13, 2013 decision, finding that appellant had submitted an EN1032 form dated October 20, 2013 and received by OWCP on November 22, 2013. She remanded the case for OWCP to retroactively resume her compensation payments. In a subsequent decision dated November 13, 2014, OWCP suspended appellant's wage-loss compensation benefits, effective November 16, 2014, for again failing to submit an EN1032 form as requested.

⁵ 5 U.S.C. § 8106(b).

Under 20 C.F.R. § 10.528 of OWCP's 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 in the previous 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

The Board finds that OWCP improperly suspended appellant's compensation benefits, effective November 11, 2018, for failure to complete and return a Form EN1032 as requested.

In an October 4, 2018 letter mailed to appellant's address of record, OWCP informed her that she needed to complete, sign, and return a Form EN1032 and that failure to return the requested document within 30 days would lead to the suspension of her compensation benefits. Appellant completed, signed, and returned a Form EN1032 dated October 24, 2018 that was received by OWCP on November 5, 2018. OWCP suspended her compensation benefits, effective November 11, 2018, for failing to respond to its October 4, 2018 request.

The Board finds, however, that appellant responded to the October 4, 2018 request letter on November 5, 2018 and submitted a completed Form EN1032. Although appellant did not submit the form within 30 days of October 4, 2018, she did respond to OWCP's October 4, 2018 letter and complied with its instructions to complete all the questions. Therefore, OWCP's November 7, 2018 finding that she failed to respond is erroneous, and the suspension of her compensation benefits was improper.⁸ The case will be returned to OWCP for reinstatement of appropriate compensation benefits.

CONCLUSION

The Board finds that OWCP improperly suspended appellant's compensation benefits effective November 11, 2018, for failure to complete and return a Form EN1032 as requested.

⁶ 20 C.F.R. § 10.528. *See also C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁷ *Id.*; *see also* 20 C.F.R. § 10.525.

⁸ *S.F.*, Docket No. 12-1821 (issued January 25, 2013); *W.F.*, Docket No. 11-0877 (issued March 9, 2012).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 24, 2019
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