

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

S.H., Appellant	)	
	)	
and	)	<b>Docket No. 19-1876</b>
	)	<b>Issued: June 23, 2020</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
CUSTOMS & BORDER PROTECTION,	)	
San Diego, CA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 9, 2019 appellant filed a timely appeal from an August 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the August 28, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly suspended appellant's wage-loss compensation benefits, effective August 28, 2019, for failure to complete an EN1032 form as requested.

## **FACTUAL HISTORY**

On October 29, 2007 appellant, then a 53-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that on October 20, 2007 she injured her knees while running on a track while in the performance of duty. OWCP accepted her claim for bilateral enthesopathy of the knee and other bilateral disorders of the muscle, ligament, and fascia. It later expanded acceptance of the claim to include bilateral lateral collateral ligament strains of the knees, bilateral localized primary osteoarthritis of the knees, and bilateral chondromalacia patellae. Appellant underwent an OWCP-authorized left knee arthroscopy, synovectomy, and chondroplasty on April 24, 2008 and an authorized left knee arthroscopic partial chondroplasty in the patellofemoral compartment and debridement of arthrofibrotic scarring on July 24, 2008. She was removed from her position as of July 12, 2009 for inability to perform essential duties of her position. OWCP paid appellant wage-loss compensation on the periodic rolls as of August 30, 2019.

By Form CA-1032 dated May 13, 2019, OWCP informed appellant that federal regulations required her to report any improvement in her medical condition, any employment, any change in the status of claimed dependents, any third-party settlement, and any income or change in income from federally-assisted disability or benefit programs. It notified her that she was required to fully answer all questions on the enclosed EN1032 form and return it within 30 days or her benefits would be suspended. The letter was mailed to appellant's last known address. However, no response was received by appellant.

By decision dated August 28, 2019, OWCP suspended appellant's compensation benefits, effective on that date, for failing to complete the 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.<sup>3</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

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<sup>3</sup> 5 U.S.C. § 8106(b).

to work, which the employee has performed for the prior 15 months.<sup>4</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>5</sup>

### ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective August 28, 2019, for failure to complete an EN1032 form as requested.

On May 13, 2019 OWCP provided appellant with an EN1032 form. It properly advised her that, if she did not completely answer all of the questions and return the statement within 30 days, her benefits would be suspended, until the form was received. The record reflects that OWCP's letter was properly sent to appellant's last known address and there is no indication that it was returned as undeliverable.<sup>6</sup> 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 of OWCP's request. Appellant was receiving wage-loss compensation and she was, therefore, required to complete the EN1032 form. Her failure to file an EN1032 form prior to August 28, 2019 resulted in the suspension of compensation. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective August 28, 2019, pursuant to 20 C.F.R. § 10.528.

### CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective August 28, 2019, for failure to complete an EN1032 form as requested.

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<sup>4</sup> 20 C.F.R. § 10.528. *See also H.B.*, Docket No. 19-0405 (issued June 26, 2019); *M.S.*, Docket No. 18-1107 (issued December 28, 2018); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

<sup>5</sup> *Id.*; *see also id.* at § 10.525.

<sup>6</sup> *See H.B.*, *supra* note 4; *Kenneth E. Harris*, 54 ECAB 502, 505 (2003); *J.J.*, Docket No. 13-1067 (issued September 20, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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