

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

_____)	
R.W., Appellant)	
)	
and)	Docket No. 19-1465
)	Issued: January 28, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Raleigh, NC, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 26, 2019 appellant filed a timely appeal from a June 4, 2019 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 4, 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 schedule award compensation pursuant to 20 C.F.R. § 10.528.

FACTUAL HISTORY

On February 4, 2010 appellant, then a 37-year-old mail processing clerk, injured his right knee when sweeping mail on a delivery bar code sorter machine when his right knee gave out while in the performance of duty. On April 7, 2010 OWCP accepted his traumatic injury claim for right knee lateral meniscus tear. On May 3, 2010 he underwent OWCP-approved right knee arthroscopic surgery. OWCP paid wage-loss compensation for temporary total disability beginning May 1, 2010 and placed appellant on the periodic rolls effective June 6, 2010. Appellant resumed work in a light-duty capacity effective June 11, 2010.

On February 2, 2011 OWCP granted appellant a schedule award for 30 percent permanent impairment of the right lower extremity, which covered an 86.4-week period September 8, 2010 through May 4, 2012.

On May 15, 2012 appellant underwent additional OWCP-approved right knee arthroscopic surgery. He received wage-loss compensation for temporary total disability from May 19, 2012 until his return to work on June 28, 2012.

On December 3, 2012 OWCP granted a schedule award for an additional two percent permanent impairment of the right lower extremity. The award covered a period of 5.76 weeks from July 1 through August 10, 2012.

Appellant stopped work on March 13, 2013 and underwent an OWCP-authorized total right knee arthroplasty on March 14, 2013. He received wage-loss compensation for temporary total disability beginning March 13, 2013, and OWCP placed him on the periodic rolls effective April 7, 2013. Appellant continued to receive wage-loss compensation for temporary total disability through August 26, 2014.

Appellant stopped work again on October 8, 2014 and received wage-loss compensation for temporary total disability until returning to full-time modified duty on November 26, 2014.

On April 25, 2016 appellant underwent OWCP-approved surgical revision of his right total knee arthroplasty. OWCP paid him wage-loss compensation for temporary total disability beginning April 4, 2016 and placed him on the periodic rolls effective May 29, 2016. Appellant continued to receive wage-loss compensation for temporary total disability through March 10, 2017, at which time he resumed work in a full-time limited-duty capacity. Thereafter, he received compensation on the supplemental rolls for periods of intermittent wage loss through June 9, 2017.

By decision dated December 4, 2018, OWCP granted a schedule award for an additional 27 percent permanent impairment of the right lower extremity, for a total impairment of 59 percent.

The award covered a 77.76-week period October 12, 2018 through April 8, 2020.³ OWCP placed appellant on the periodic rolls, effective November 11, 2018, and he continued to receive his schedule award benefits every 28 days.

By Form CA-1032 dated April 8, 2019, OWCP informed appellant that he “must” report to OWCP any improvement in his 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 further advised that he must completely answer all questions on the enclosed EN1032 and return the statement within 30 days of the date of the request, otherwise his benefits would be suspended in accordance with 20 C.F.R. § 10.528. The letter was mailed to appellant’s last known address of record. However, no response was received.

By decision dated June 4, 2019, OWCP suspended appellant’s schedule award compensation effective June 22, 2019.

LEGAL PRECEDENT

OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months.⁴ 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 under 5 U.S.C. §§ 8105 (total disability) or 8106 (partial disability) is suspended until OWCP receives the requested report.⁵ At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁶

ANALYSIS

The Board finds that OWCP improperly suspended appellant’s schedule award compensation pursuant to 20 C.F.R. § 10.528.

Section 10.528 provides that “compensation for wage loss” for either partial or total disability will be suspended until OWCP receives the requested EN1032. In this instance, appellant was not in receipt of wage-loss compensation for either partial or total disability, but was instead receiving compensation for a schedule award pursuant to 5 U.S.C. § 8107 when OWCP suspended his compensation effective June 22, 2019. The December 4, 2018 schedule award covered the period October 12, 2018 through April 8, 2020, and OWCP’s fiscal records reflect that appellant was receiving schedule award compensation in June 2019. OWCP’s procedures

³ OWCP paid schedule award compensation at the augmented rate (75 percent) based on appellant’s dependent spouse. Both appellant’s May 17, 2018 claim for a schedule award (Form CA-7) and his latest EN1032, dated May 16, 2017, identified his spouse and minor daughter as dependents.

⁴ 20 C.F.R. § 10.528.

⁵ *Id.*

⁶ *Id.*; see also *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).

specifically precludes suspension of schedule award compensation pursuant to 20 C.F.R. § 10.528.⁷

Accordingly, the Board finds that OWCP improperly suspended all schedule award compensation effective June 22, 2019.

CONCLUSION

The Board finds that OWCP improperly suspended appellant's schedule award compensation pursuant to 20 C.F.R. § 10.528.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 28, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.14 (May 2012).