

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

T.H., Appellant)

and)

**DEPARTMENT OF THE ARMY, RED RIVER)
ARMY DEPOT, Texarkana, TX, Employer)**

**Docket No. 21-0362
Issued: July 30, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 8, 2021 appellant filed a timely appeal from a December 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits, effective January 3, 2021, for failure to complete a Form EN1032 as requested.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence to OWCP following the December 10, 2020 decision. 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.*

FACTUAL HISTORY

On February 21, 2012 appellant, then a 56-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on February 2, 2012 he sustained a right foot sprain when he slipped and fell on ice while in the performance of duty. OWCP accepted the claim for a right ankle sprain. It subsequently expanded its acceptance of the claim to include a right foot sprain, right Achilles tendinitis, right Achilles tendon rupture, right tibialis tendinitis, right calcaneal spur, right plantar fibromatosis, right shoulder and upper arm sprain, superior glenoid labrum lesion of right shoulder, and a head contusion.

OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent periods of disability commencing March 15, 2012. Appellant returned to full-time light-duty work, and again stopped work on February 20, 2013. On February 21, 2013 he underwent OWCP-authorized right shoulder arthroscopy. Appellant returned to full-time modified-duty work on April 2, 2013 as an administrative support clerk.

On August 1, 2013 appellant underwent OWCP-authorized right foot and ankle surgery. OWCP paid him wage-loss compensation on the supplemental rolls commencing August 2, 2013 and on the periodic rolls commencing August 25, 2013. On November 4, 2013 appellant returned to work in a full-time modified-duty position with no loss of wages.³

On April 9, 2018 appellant underwent OWCP-authorized C3-4 and C4-5 disc replacement. OWCP paid wage-loss compensation on the supplemental rolls commencing April 9, 2018 and on the periodic rolls commencing April 29, 2018. Appellant returned to full-time modified work on August 20, 2018.

OWCP had forwarded EN1032 forms for appellant's completion on an approximate annual basis. Appellant completed and signed the forms as requested on August 19, 2018 and in September 2019.⁴

On July 13, 2020 OWCP informed appellant that federal regulations required him to report 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 notified him that he was required to fully answer all questions on the enclosed EN1032 form and return it within 30 days or his benefits would be suspended. OWCP mailed the notice to appellant's last known address.

³ By decision dated February 6, 2014, OWCP terminated appellant's entitlement to wage-loss compensation under 5 U.S.C. §§ 8106 and 8115 as his actual earnings in the full-time modified-duty position, effective November 4, 2013, met or exceeded the current wages of the date-of-injury position. By decision dated September 10, 2014, OWCP granted appellant a schedule award for 10 percent permanent impairment of the right upper extremity and 12 percent permanent impairment of the right lower extremity. The period of the award ran for 241.92 weeks from January 13, 2014 through April 18, 2015.

⁴ By decision dated January 9, 2019, OWCP reduced appellant's wage-loss compensation based on his actual earnings commencing August 20, 2018.

On August 25, 2020 OWCP received appellant's incomplete, unsigned EN1032 form.

In a letter dated September 9, 2020, OWCP notified appellant that the EN1032 form it received on August 25, 2020 was incomplete and unsigned. It afforded him 30 days to fully complete and sign the EN1032 form letter or his compensation benefits would be suspended. No response was received.

By decision dated December 10, 2020, OWCP suspended appellant's compensation benefits, effective January 3, 2021, for failing to complete the EN1032 form as requested. It advised that, if appellant were to complete and return the form, his 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

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.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 properly suspended appellant's wage-loss compensation benefits, effective January 3, 2021, for failure to complete an EN1032 form as requested.

On July 13, 2020 OWCP provided appellant with an EN1032 form. It properly advised him that, if he did not completely answer all of the questions and return the statement within 30 days, his benefits would be suspended.

In response, appellant provided an incomplete EN1032 form, received by OWCP on August 25, 2020. In a letter dated September 9, 2020, OWCP notified him of the deficiencies in his answers and afforded him 30 days to complete and sign, and return the form. The record indicates that appellant failed to timely submit the EN1032 form within 30 days of OWCP's

⁵ 5 U.S.C. § 8106(b).

⁶ 20 C.F.R. § 10.528. *See J.T.*, Docket No. 20-1327 (issued March 2, 2021); *R.S.*, 20-0580 (issued September 14, 2020); *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).

⁷ *Id.*; *see also id.* at § 10.525.

request. Appellant was receiving wage-loss compensation and he was therefore required to complete the EN1032 form. His failure to file an EN1032 form within 30 days resulted in the suspension of compensation. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective January 3, 2021, pursuant to 20 C.F.R. § 10.528.

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective January 3, 2021, for failure to complete the EN1032 form as requested.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 30, 2021
Washington, DC

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

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

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