

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

M.B., JR., Appellant	)	
	)	
and	)	Docket No. 20-0865
	)	Issued: June 15, 2021
DEPARTMENT OF HOMELAND SECURITY,	)	
U.S. CUSTOMS & BORDER PROTECTION,	)	
Brownsville, TX, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On March 11, 2020 appellant filed a timely appeal from a March 4, 2020 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 March 4, 2020 decision, appellant submitted additional evidence to OWCP. 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 compensation benefits, effective March 29, 2020, for failure to complete a Form CA-1032 as requested.

## **FACTUAL HISTORY**

On January 29, 2003 appellant, then a 33-year-old immigration inspector, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2003 he experienced lower back pain when he chased down and wrestled a subject to the ground while in the performance of duty. He stopped work on January 30, 2003. OWCP accepted the claim for lumbar radiculitis. It paid appellant wage-loss compensation and placed him on the periodic rolls, effective July 13, 2003.

On June 14, 2007 appellant returned to work in private sector employment. By decision dated October 17, 2007, OWCP determined that his work as a digital imaging technician fairly and reasonably represented his wage-earning capacity. It informed appellant that his wage-loss compensation benefits would be reduced, effective June 14, 2007.

Over the years, OWCP periodically requested that appellant submit financial disclosure statements (Form CA-1032), which solicited information about his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

On January 14, 2020 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous year and that a Form CA-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed Form CA-1032 and return it within 30 days or his benefits would be suspended. The letter was mailed to appellant's last known address of record. No response was received.

In a March 2, 2020 memorandum of telephone call (Form CA-110), appellant informed OWCP that he had lost the first page of his Form CA-1032. He was advised that another copy would be sent to him.

By decision dated March 4, 2020, OWCP suspended appellant's wage-loss compensation benefits, effective March 29, 2020, due to his failure to submit the Form CA-1032, as requested. It advised that, if he completed and returned an enclosed copy of the Form CA-1032, 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.<sup>3</sup>

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<sup>3</sup> 5 U.S.C. § 8106(b).

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>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 March 29, 2020, for failure to complete a Form CA-1032 as requested.

On January 14, 2020 OWCP provided appellant with a Form CA-1032 and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings or his benefits would be suspended. The record reflects that OWCP's letter was properly sent to appellant's last known address of record and there is no indication that it was returned as undeliverable.<sup>6</sup>

The record indicates that appellant failed to timely submit the Form CA-1032 as required. Appellant was receiving wage-loss compensation on the periodic rolls and he was, therefore, required to complete the CA-1032 form. His failure to file a CA-1032 form within 30 days resulted in the suspension of compensation. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective March 29, 2020, pursuant to 20 C.F.R. § 10.528.<sup>7</sup>

### **CONCLUSION**

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective March 29, 2020, for failure to complete a Form CA-1032 as requested.

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<sup>4</sup> 20 C.F.R. § 10.528.

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

<sup>6</sup> *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015) (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).

<sup>7</sup> *See W.L.*, Docket No. 18-1051 (issued March 24, 2021); *see also R.B.*, Docket No. 20-176 (issued June 25, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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