

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

_____)	
T.H., Appellant)	
)	
and)	Docket No. 20-1598
)	Issued: June 2, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Wichita, KS, 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 10, 2020 appellant filed a timely appeal from an April 23, 2020 merit decision¹ and a May 4, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ The record contains two April 23, 2020 decisions suspending appellant's compensation for failure to return a March 9, 2020 Form EN1032. One decision suspends his compensation, effective April 23, 2020, and one suspends his compensation effective April 26, 2020. Computer records indicate that OWCP suspended appellant's compensation effective April 26, 2020.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 4, 2020 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.*

ISSUES

The issues are: (1) whether OWCP properly suspended appellant's wage-loss compensation benefits, effective April 26, 2020, for failure to complete an EN1032 form as requested; and (2) whether it properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board on different issues.⁴ The facts and circumstances as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On March 18, 1985 appellant, then a 29-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 1985 he sustained severe muscle spasms while in the performance of duty. He stopped work on March 16, 1985. OWCP accepted the claim for lumbar sprain and displacement of a lumbar intervertebral disc without myelopathy. It subsequently expanded acceptance of the claim to include lumbosacral radiculopathy at L5-S1 and lumbar spondylolisthesis. OWCP paid appellant wage-loss compensation on the periodic rolls based on his loss of wage-earning capacity effective November 8, 1998.

OWCP periodically requested that appellant submit financial disclosure statements (Form EN1032) which solicited information about his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

On March 9, 2020 OWCP provided appellant with a Form EN1032 and informed him that federal regulations required him to make an affidavit regarding any earnings received or employment performed during the previous 15-month period. It advised that he was required to fully answer all questions on the EN1032 form and return it within 30 days or his benefits would be suspended pursuant to 20 C.F.R. § 10.528. OWCP mailed the form to appellant's address of record. No response was received.

By decision dated April 23, 2020,⁵ OWCP suspended appellant's wage-loss compensation benefits, effective April 26, 2020, for failing to submit the EN1032 form as requested. It noted that he had not responded to its March 9, 2020 letter. OWCP advised that, if appellant completed and returned an enclosed copy of the EN1032 form, it would restore his wage-loss compensation benefits retroactive to the date of suspension.

On April 28, 2020 appellant requested reconsideration. He asserted that he had been unable to see his physician due to the coronavirus pandemic. Appellant submitted a message from his physician's office confirming that he was unable to obtain an appointment because of the

⁴ Docket No. 04-0886 (issued October 27, 2004); *Order Remanding Case*, Docket No. 05-0942 (issued September 6, 2005); Docket No. 06-1450 (issued January 30, 2007), *denying petition for recon.*, Docket No. 06-1450 (issued July 16, 2007).

⁵ *Supra* note 1.

pandemic. He also submitted a March 21, 2020 letter canceling an appointment scheduled for August 14, 2020.

By decision dated May 4, 2020, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA⁶ 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.⁷

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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective April 26, 2020, for failure to complete an EN1032 form as requested.

On March 9, 2020 OWCP provided appellant with the EN1032 form and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It properly notified him that, if he did not completely answer all questions and return within 30 days his benefits would be suspended. The record reflects that OWCP's letter was sent to appellant's address of record and there is no indication that it was returned as undeliverable.¹⁰ 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.¹¹

Appellant failed to timely submit the EN1032 form within 30 days of OWCP's request. He was receiving wage-loss compensation and was, therefore, required to complete the EN1032

⁶ *Supra* note 1.

⁷ 5 U.S.C. § 8106(b).

⁸ 20 C.F.R. § 10.528; *see also R.B.*, Docket No. 20-0176 (issued June 25, 2020); *A.H.*, Docket No. 15-241 (issued April 3, 2015).

⁹ *Id.*

¹⁰ *See J.H.*, Docket No. 19-0785 (issued October 23, 2020); *Kenneth E. Harris*, 54 ECAB 502 (2003).

¹¹ *Id.*

form.¹² Appellant's failure to file an EN1032 form within 30 days properly resulted in the suspension of his wage-loss compensation. Thus, the Board finds that OWCP properly suspended his wage-loss compensation benefits, effective April 26, 2020, pursuant to 20 C.F.R. § 10.528.¹³

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹² See *R.S.*, Docket No. 20-0580 (issued September 14, 2020); *A.S.*, Docket No. 17-1530 (issued November 7, 2017).

¹³ *K.F.*, Docket No. 20-1248 (issued February 8, 2021); *P.M.*, Docket No. 16-0382 (issued May 19, 2016); *M.W.*, Docket No. 15-0507 (issued June 18, 2015).

¹⁴ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁵ 20 C.F.R. § 10.606(b)(3); see *L.D.*, *id.*; see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

¹⁷ *Id.* at § 10.608(a); see also *M.S.*, 59 ECAB 231 (2007).

¹⁸ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously considered. Appellant asserted that he was unable to get an appointment with his physician due to the coronavirus pandemic. The issue, however, is whether OWCP properly suspended his compensation based on his failure to submit an EN1032 form disclosing earnings and employment information. The Board has held the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁹ Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).²⁰

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant submitted confirmation from his physician's office that he was unable to get a current appointment. This evidence, however, is not relevant to the underlying issue of the suspension of his compensation for failing to return an EN1032 form. As noted, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²¹ Appellant has not provided relevant and pertinent new evidence and, thus, is not entitled to a merit review based on the third requirement under section 10.606(b)(3).²²

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²³

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective April 26, 2020, for failure to complete an EN1032 form as requested. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹⁹ See *C.C.*, Docket No. 20-0950 (issued October 29, 2020).

²⁰ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²¹ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *G.Q.*, Docket No. 18-1697 (issued March 21, 2019).

²² 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

²³ *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 23 and May 4, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 2, 2021
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