

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

M.B., Appellant)	
)	
and)	Docket No. 19-1104
)	Issued: March 30, 2021
U.S. POSTAL SERVICE, DALLAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Dallas, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 17, 2019 appellant filed a timely appeal from a February 28, 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

ISSUES

The issues are: (1) whether OWCP properly determined that appellant's compensation benefits should be suspended, effective October 14, 2018, for failure to complete a Form EN1032 as requested; (2) whether appellant received an overpayment of compensation in the amount of

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 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.*

\$8,198.70 because OWCP failed to suspend her monetary compensation for the period October 14, 2018 through January 5, 2019; (3) whether OWCP properly found appellant at fault in the creation of the overpayment and thereby precluded from waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior order and decision are incorporated herein by reference. The relevant facts are as follows.

On May 28, 1993 appellant, then a 44-year-old full-time manual clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment including pulling tape and the constant movement of stamping mail. She underwent a right carpal tunnel release in October 1993 and a release on the left in August 1994. OWCP assigned File No. xxxxxx270, and accepted the claim for bilateral carpal tunnel syndrome.⁴

Appellant underwent cervical spine surgery in November 1996 and pump insertion for pain medication on October 17, 2000. OWCP subsequently expanded the claim to include: the conditions of post-laminectomy syndrome, cervical region; displacement of lumbar intervertebral disc without myelopathy; lumbar spondylosis with myelopathy; displacement of cervical intervertebral disc without myelopathy; other psychogenic pain; sprain of neck; and anoxic brain damage.

Appellant had returned to limited-duty work, four hours a day, on August 5, 1998. She stopped work on November 1, 1999. OWCP paid appellant wage-loss compensation on the supplemental rolls as of November 1, 1999 and on the periodic rolls as of January 26, 2003.

OWCP had forwarded EN1032 disclosure forms for appellant's completion on an approximate annual basis. Appellant returned a completed EN1032 form on August 25, 2016. At that time she indicated that her address was in Desoto, Texas.

On July 17, 2017 and July 10, 2018 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.⁵

³ Docket No. 08-1642 (issued September 21, 2009); *Order Remanding Case*, Docket No. 12-0749 (issued November 26, 2012).

⁴ In a prior claim, assigned OWCP File No. xxxxxx169, appellant filed a notice of traumatic injury (Form CA-1) on September 28, 1988 alleging that she had sustained cervical and back injuries on September 6, 1988 while carrying mail back and forth to her station because carts were not available. OWCP accepted cervical and lumbar strains. It administratively combined the files, with OWCP File No. xxxxxx270 becoming the master file.

⁵ OWCP mailed the letters to appellant's last known address of record in Desoto, Texas. It did not receive a response to either request.

By decisions dated September 15, 2017 and September 6, 2018, OWCP notified appellant that her FECA compensation was being suspended effective September 17, 2017 and October 14, 2018, respectively, because she failed to complete EN1032 forms as requested. Both decisions 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. Each was mailed to the Desoto, Texas address.⁶ Appellant did not forward a completed EN1032 or respond to these notifications.

By decision dated September 6, 2018, OWCP suspended appellant's FECA compensation effective October 14, 2018 for her failure to complete an EN1032 as requested.

A January 10, 2019 overpayment worksheet indicated that for the period October 14, 2018 to January 5, 2019, appellant was paid net FECA compensation in the amount of \$8,198.70 to which she was not entitled.

On January 28, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$8,198.70 had been created. It explained that the overpayment occurred for the period October 17, 2018 through January 5, 2019⁷ because appellant did not return the completed EN1032 form as requested. OWCP found her at fault because she failed to provide information that she knew or should have known to be material. It provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). OWCP also forwarded an EN1032 form. It explained its calculation of the overpayment, informed appellant of the actions she could take, and allotted 30 days for her to respond.⁸ Appellant did not respond to the preliminary overpayment determination.

By decision dated February 28, 2019, OWCP finalized the preliminary overpayment determination. It found appellant at fault in the creation of an overpayment of compensation in the amount of \$8,198.70 because she did not return a completed EN1032 form as required.

LEGAL PRECEDENT -- ISSUE 1

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.⁹

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.¹⁰ If an employee who is

⁶ OWCP also mailed the September 6, 2018 decision to appellant at an address in Cedar Hill, Texas.

⁷ OWCP indicated that the period of the overpayment began October 17, 2018 in its introductory statement and conclusory sentence. However, in explaining the calculation of the overpayment, it indicated that the period began October 14, 2018.

⁸ OWCP mailed the preliminary overpayment determination to appellant's address of record in Desoto, Texas.

⁹ 5 U.S.C. § 8106(b).

¹⁰ 20 C.F.R. § 10.528; *see also R.S.*, Docket No. 20-0580 (issued September 14, 2020); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant's compensation benefits should be suspended, effective October 14, 2018, for failure to complete a Form EN1032 as requested.

On July 10, 2018 OWCP provided appellant with an EN1032 form for her completion. 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.

The record indicates that appellant failed to timely submit a completed EN1032 form within 30 days of OWCP's request. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective October 14, 2018, pursuant to 20 C.F.R. § 10.528.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹³ Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.¹⁴

Chapter 6.200 of OWCP's procedures contain instructions on identifying and calculating an overpayment. Overpayments can be found following a return to work with no wage loss or partial wage loss compensation based on an incorrect pay rate or when improper deductions for health and life insurance are made, incorrect payment of augmented compensation, payment for an improper compensation period or an incorrect schedule award, the receipt of dual benefits, payment to a surviving spouse under the age of 55 who remarried, forfeiture, or payment after the death of a claimant or survivor.¹⁵ The section describing an incorrect compensation period lists six scenarios: when wage loss was previously paid for specific time claimed or no wage loss actually exists, the claims examiner incorrectly entered time of wage loss to which the claimant was not entitled, wage-loss compensation was paid for less than 14 days, but waiting days were not withheld, the claimant was paid for sick or annual leave by the employing establishment for

¹¹ *Id.*; *see also* 20 C.F.R. § 10.525.

¹² *H.B.*, Docket No. 19-0405 (issued June 26, 2019).

¹³ 5 U.S.C. § 8102(a).

¹⁴ *Id.* at. § 8129(a).

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (September 2018); *see P.H.*, Docket No. 18-1539 (issued August 2, 2019).

the same period that wage-loss compensation was paid, the claimant was paid wage-loss compensation under two claims for the same period, and the claimant received separation pay for a claimed wage-loss compensation period.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$8,198.70 for the period October 14, 2018 through January 5, 2019.

As noted, Chapter 6.200 of OWCP's procedures indicates that overpayments are not limited to the specific listed scenarios and that additional procedures provide guidance regarding actions based on EN1032 responses.¹⁷ The procedures, however, do not provide specific guidance regarding an overpayment based on a suspension of compensation for failure to submit a requested EN1032 form.

These regulations and procedures do not provide authority for OWCP to issue an overpayment decision while a suspension of wage-loss compensation is in place. Therefore, the Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$8,198.00 for the period October 17, 2018 through January 5, 2019.¹⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant's compensation benefits should be suspended effective October 14, 2018 for failure to complete a Form EN1032 as requested. The Board further finds that OWCP improperly determined that an overpayment of compensation occurred because OWCP failed to suspend her monetary compensation for the period October 14, 2018 through January 5, 2019.

¹⁶ Federal (FECA) Procedure Manual, *id.* at Chapter 6.200.1e.

¹⁷ *Supra* notes 15 and 16.

¹⁸ *See generally G.G.*, Docket No. 19-0684 (issued December 23, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 decision of the Office of Workers' Compensation Programs is reversed.¹⁹

Issued: March 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

¹⁹ In light of the Board's disposition of Issue 2, Issues 3 and 4 are rendered moot.