

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

L.M., Appellant

and

**DEPARTMENT OF THE ARMY, POHAKULOA
TRAINING AREA, Hilo, HI, Employer**

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**Docket No. 22-0387
Issued: August 2, 2022**

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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 5, 2022 appellant filed a timely appeal from a December 9, 2021 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

ISSUE

The issue is whether OWCP properly suspended appellant's wage-loss compensation benefits, effective December 9, 2021, for failure to complete a Form CA-1032 as requested.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 9, 2021 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.*

FACTUAL HISTORY

On November 1, 2001 appellant, then a 47-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his tailbone, hip, and lower back when his air seat bottomed out in a pothole while in the performance of duty. OWCP accepted the claim for thoracic/lumbosacral neuritis or radiculitis, lumbar sprain, and degenerative disc disease of the lumbar spine. Appellant stopped work on November 2, 2001 and returned to work on November 10, 2001. He stopped work again on June 17, 2002 and did not return. OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls effective June 17, 2002 and on the periodic rolls effective December 1, 2002.

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 October 12, 2021 OWCP informed appellant that federal regulations required him to execute an affidavit regarding any earnings received or employment performed during the previous 15 months and that it had enclosed a Form CA-1032 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 pursuant to 20 C.F.R. § 10.528. OWCP mailed the letter to appellant's address of record. No response was received.

By decision dated December 9, 2021, OWCP suspended appellant's wage-loss compensation benefits, effective that date, 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 of suspension.

LEGAL PRECEDENT

Section 8106(b) of FECA³ 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.⁴

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.⁵ 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

³ *Supra* note 1.

⁴ 5 U.S.C. § 8106(b).

⁵ 20 C.F.R. § 10.528; *see also R.B.*, Docket No. 20-0176 (issued June 25, 2020); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

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 properly suspended appellant's wage-loss compensation benefits, effective December 9, 2021, for failure to complete a Form CA-1032 as requested.

On October 12, 2021 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. It properly notified him that, if he did not completely answer all questions and return the form within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was sent to appellant's address of record.⁷

Appellant, however, failed to timely submit the Form CA-1032 as requested. His failure to file an CA-1032 form within 30 days properly resulted in the suspension of his wage-loss compensation. Thus, the Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective December 9, 2021, pursuant to 20 C.F.R. § 10.528.⁸

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective December 9, 2021, for failure to complete a Form CA-1032 as requested.

⁶ *Id.*; *see also id.* at § 10.525.

⁷ *See M.B.*, Docket No. 20-0865 (issued June 15, 2021); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, *id.*; (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).

⁸ *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).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board