

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

_____)
M.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Springfield, MA, Employer)
_____)

Docket No. 21-1043
Issued: February 14, 2022

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 June 29, 2021 appellant filed a timely appeal from a May 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 On his application for review (AB-1 Form), appellant indicated that he was appealing a May 6, 2021 decision. He then referred to a preliminary overpayment determination dated November 2, 2020, which OWCP finalized by decision dated December 30, 2020. An appeal of a final adverse OWCP decision must be filed within 180 days of the decision. *See* 20 C.F.R. § 501.3(e). The 180th day following OWCP's December 30, 2020 decision was Monday, June 28, 2021. As this appeal was filed on June 29, 2021, the Board lacks jurisdiction to review the December 30, 2020 merit decision. *See A.G.*, Docket No. 20-0290 (issued June 24, 2020; *P.H.*, Docket No. 19-1354 (issued March 13, 2020); *E.H.*, Docket No. 19-0859 (issued December 10, 2019).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 6, 2021 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 wage-loss compensation benefits, effective May 23, 2021, for failure to complete a Form CA-1032 as requested.

FACTUAL HISTORY

On September 6, 1991 appellant, then a 26-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he injured his back when lifting sacks of mail while in the performance of duty. He was off work until September 26, 1991. OWCP accepted the claim for lumbar strain and displacement of lumbar intervertebral disc without myelopathy. Appellant then filed an occupational disease claim (Form CA-2) for back conditions arising from his mail handler duties beginning in 1992. OWCP accepted the claim for a herniated disc at L5-S1. It paid appellant wage-loss compensation on the periodic rolls as of June 16, 2002.

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 March 15, 2021 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. OWCP mailed the letter to appellant's last known address of record. No response was received.

By decision dated May 6, 2021, OWCP suspended appellant's wage-loss compensation benefits, effective May 23, 2021, 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.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

⁴ 5 U.S.C. § 8106(b).

⁵ 20 C.F.R. § 10.528.

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 May 23, 2021, for failure to complete a Form CA-1032 as requested.

On March 15, 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 and 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.⁷

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 May 23, 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 May 23, 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.*, 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).

⁸ *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 May 6, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2022
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