

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

_____)
B.F., Appellant)

and)

**DEPARTMENT OF COMMERCE, BUREAU
OF THE CENSUS, Charlotte, NC, Employer**)
_____)

**Docket No. 22-0585
Issued: October 20, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 2, 2022 appellant filed a timely appeal from a February 1, 2022 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 to consider the merits of the case.

ISSUE

The issue is whether OWCP properly suspended appellant's wage-loss compensation benefits, effective February 1, 2022, due to her failure to submit an EN-1032 form, as requested.

¹ The Board notes that, following the February 1, 2022 decision, OWCP and the Board 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.*

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 14, 2002 appellant, then a 46-year-old senior field representative, filed a traumatic injury claim (Form CA-1) alleging that on April 11, 2002 she injured her head, neck, low back, and right knee when another driver struck her vehicle from behind while in the performance of duty. She stopped work on July 12, 2002. OWCP accepted the claim for lumbar strain, right knee strain, right knee meniscal tear, disorders of the bursae and tendons in the right shoulder, right enthesopathy of the hip, and lesion of ulnar nerve, unspecified mononeuritis upper limb, localized primary osteoarthritis of the right lower leg, dislocation of patella (closed), and right trigger finger. It paid appellant wage-loss compensation on the supplemental rolls beginning August 21, 2002 and on the periodic rolls beginning November 3, 2002.

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

In a December 3, 2021 letter, OWCP informed appellant that federal regulations required her to execute an affidavit relative to any earnings or employment during the previous 15 months and that an EN-1032 form was enclosed for that purpose. It notified her that she must fully answer all questions on the enclosed EN-1032 form and return it within 30 days or her benefits would be suspended. OWCP mailed the notice to appellant's last known address of record. No response was received within the time allotted.

By decision dated February 1, 2022, OWCP suspended appellant's wage-loss compensation benefits effective that date, due to her failure to submit the EN-1032 form, as requested. It noted that, if she completed and returned the enclosed copy of the EN-1032 form, her compensation benefits would be restored retroactively to the date they were suspended.

LEGAL PRECEDENT

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.³

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.⁴ 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.⁵

³ 5 U.S.C. § 8106(b).

⁴ 20 C.F.R. § 10.528.

⁵ *Id.*; see also *id.* at § 10.525.

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective February 1, 2022, due to her failure to submit an EN-1032 form, as requested.

On December 3, 2021 OWCP provided appellant with an EN-1032 form and notified her that federal regulations required her to complete the form and answer all questions concerning her employment or earnings. It notified her that, if she did not completely answer all questions and return the statement within 30 days, her benefits would be suspended. The Board has held that, absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.⁶ The presumption is commonly referred to as the "mailbox rule."⁷ The record reflects that OWCP's letter was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable. The record establishes that appellant did not submit a completed EN-1032 prior to the February 1, 2022 OWCP decision suspending appellant's benefits. Thus, the Board finds that OWCP properly suspended her compensation benefits, effective February 1, 2022, pursuant to 20 C.F.R. § 10.528.⁸

CONCLUSION

The Board finds that OWCP has met its burden of proof to suspend appellant's wage-loss compensation benefits, effective February 1, 2022, due to her failure to submit an EN-1032 form, as requested.

⁶ *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁷ *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁸ *See W.L.*, Docket No. 18-1051 (issued March 24, 2021); *M.W.*, Docket No. 15-0507 (issued June 18, 2015); *see also James A. Igo*, 49 ECAB 189 (1997).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board