

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

<hr/>)	
Y.B., Appellant)	
)	
and)	Docket No. 23-0838
)	Issued: December 20, 2023
DEPARTMENT OF THE AIR FORCE,)	
HICKAM AIR FORCE BASE, HI, Employer)	
<hr/>)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 26, 2023 appellant filed a timely appeal from a December 5, 2022 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 5, 2022, for failure to submit a Form CA-1032, as requested.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 5, 2022 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.*

FACTUAL HISTORY

On July 11, 2005 appellant, then a 54-year-old supervisory general supply specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 8, 2005 she sustained injuries to the right side of her head and neck, right lower extremity, right knee, hands, and shoulders when she caught her left shoe on a boilerplate, tripped, and fell onto the right side of her body. She stopped work on the date of injury. OWCP accepted the claim for contusions of multiple sites; sprain of right shoulder, upper arm, and rotator cuff; contusion of the face, scalp, and neck; bilateral carpal tunnel syndrome; contusions of the bilateral hands; and tenosynovitis of the bilateral hands and wrists.³ It paid appellant wage-loss compensation on the supplemental rolls, effective September 12, 2005. Appellant returned to part-time modified-duty work on September 29, 2006. OWCP paid her wage-loss compensation on the periodic rolls, effective September 28, 2008.⁴ Appellant retired from the employing establishment effective October 2, 2008.

On October 18, 2022 OWCP informed appellant that federal regulations required her 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 advised her that she must fully answer all questions on the enclosed Form CA-1032, and return it within 30 days or her benefits would be suspended. OWCP mailed the letter to appellant's last known address of record.

On December 5, 2022 OWCP received a completed Form CA-1032, signed by appellant on November 9, 2022.

By decision dated December 5, 2022, OWCP suspended appellant's wage-loss compensation benefits, effective that day, due to her failure to submit the Form CA-1032, as requested.⁵ It advised that, if she were to complete and return the form, her compensation benefits would be restored retroactively to the date they were suspended.

³ On February 2, 2006 appellant underwent an OWCP-authorized right carpal tunnel release and on May 11, 2006 she underwent OWCP-authorized left carpal tunnel release. On December 8, 2005 she underwent OWCP-authorized right shoulder arthroscopy. On January 6, 2015 appellant underwent OWCP-authorized right shoulder arthroscopy with debridement and right biceps tenotomy.

⁴ In a preliminary notice dated November 9, 2017 and finalized December 11, 2017, OWCP determined that appellant received an overpayment of compensation in the amount of \$43,034.00 for the period September 8, 2008 through November 11, 2017 as she had received wage-loss compensation at an incorrect pay rate. It directed recovery of the overpayment by withholding \$250.00 from her continuing compensation payments. In a preliminary notice dated April 20, 2018 and finalized August 3, 2018, OWCP found that appellant received an overpayment of compensation in the amount of \$2,926.19 for the period February 3 through March 3, 2018, for which she was at fault, as she concurrently received FECA wage-loss compensation benefits and Office of Personnel Management retirement benefits. It directed recovery of the overpayment by a single payment of the entire amount. In a preliminary notice dated March 28, 2022 and finalized May 3, 2022, OWCP determined that appellant received an overpayment of compensation in the amount of \$64,610.90 for the period December 1, 2015 through January 2, 2021, for which she was not at fault, as she concurrently received FECA wage-loss compensation benefits and Social Security Administration age-related retirement benefits without an appropriate offset. It directed recovery of the overpayment by deducting \$450.00 from her continuing compensation payments every 28 days.

⁵ On its face, OWCP's December 5, 2022 decision found that appellant failed to respond to the October 18, 2022 request. The Board notes that, while she did respond, she did not do so in a timely manner. Under the circumstances of the case, OWCP's finding that appellant failed to respond is harmless error.

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.⁶

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.⁷ 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.⁸

ANALYSIS

The Board finds that OWCP has met its burden of proof to suspend appellant's wage-loss compensation benefits, effective December 5, 2022, for failure to submit a Form CA-1032, as requested.

On October 18, 2022 OWCP provided appellant with a Form CA-1032 and notified her that federal regulations required her to complete the form and answer all questions concerning her employment or earnings. It properly notified her that, if she did not completely answer all questions and return the statement within 30 days, her benefits would be suspended. The record reflects that OWCP's letter was properly mailed to appellant's last known address of record and there is no indication that it was returned as undeliverable.⁹ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee last known address of record is presumed to be received by the addressee.¹⁰

The record indicates that appellant failed to timely submit the Form CA-1032 within 30 days of OWCP's request. She was receiving wage-loss compensation benefits and she was, therefore, required to complete the Form CA-1032. Appellant's failure to file a Form CA-1032 within 30 days supports the suspension of compensation. Thus, the Board finds that OWCP properly suspended her compensation benefits, effective December 5, 2022, pursuant to 20 C.F.R. § 10.528.

⁶ 5 U.S.C. § 8106(b).

⁷ 20 C.F.R. § 10.528.

⁸ *Id.*; *see also id.* at § 10.525.

⁹ *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *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).

¹⁰ *Id.*

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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