

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

M.A., Appellant)	
)	
and)	Docket No. 23-0297
)	Issued: July 6, 2023
U.S. POSTAL SERVICE, DETROIT)	
PROCESSING & DISTRIBUTION CENTER,)	
Detroit, MI, Employer)	
)	

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 23, 2022 appellant filed a timely appeal from a December 19, 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 19, 2022, due to her failure to submit an EN-1032 form, as requested.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the December 19, 2022 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

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 March 13, 2013 appellant, then a 48-year-old general clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2013 she injured her shoulders and left hip when she fell from her chair while in the performance of duty. On April 15, 2013 OWCP accepted the claim for a partial tear of the right rotator cuff. It paid appellant wage-loss compensation on the supplemental rolls commencing April 1, 2013 and on the periodic rolls commencing June 2, 2013.

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

On June 21, 2022 OWCP forwarded a Form EN-1032 to appellant for completion. No response was received. In a letter dated August 19, 2022, 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.

By decision dated December 19, 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.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 *Order Dismissing Appeal*, Docket No. 23-0072 (issued November 21, 2022); Docket No. 20-0317 (issued October 9, 2020).

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 December 19, 2022, due to her failure to submit an EN-1032 form, as requested.

On June 21 and August 19, 2022 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.⁷ The presumption is commonly referred to as the "mailbox rule."⁸ The record reflects that OWCP's letter was properly sent to appellant's address of record, and that 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 December 19, 2022 OWCP decision suspending appellant's benefits. Thus, the Board finds that OWCP properly suspended her compensation benefits, effective December 19, 2022, pursuant to 20 C.F.R. § 10.528.⁹

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective December 19, 2022, due to her failure to submit an EN-1032 form, as requested.

⁶ *Id.*; *see also id.* at § 10.525.

⁷ *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).

⁸ *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁹ *See B.F.*, Docket No. 22-0585 (issued October 20, 2022); *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 December 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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