

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

_____	)	
<b>L.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0632</b>
	)	<b>Issued: September 26, 2023</b>
<b>U.S. POSTAL SERVICE, DALLAS</b>	)	
<b>PERFORMANCE CLUSTER, Coppell, TX,</b>	)	
<b>Employer</b>	)	
_____	)	

*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 March 22, 2023 appellant filed a timely appeal from a February 17, 2023<sup>1</sup> merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

---

<sup>1</sup> The Board notes that the only decision within its jurisdiction is the February 17, 2023 decision.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the February 17, 2023 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 February 17, 2023, due to her failure to submit a Form EN-1032 as requested.

## FACTUAL HISTORY

On July 4, 2006 appellant, then a 53-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her upper extremities due to factors of her federal employment including 22 years of repetitive use of her hands as part of her work duties. She did not stop work at the time of the filing. OWCP accepted appellant's claim for tenosynovitis of the hands and wrists, and subsequently expanded the acceptance of her claim to include bilateral carpal tunnel syndrome. By decision dated April 15, 2009, it granted her a schedule award for 14 percent permanent impairment of the left upper extremity and 4 percent permanent impairment of the right upper extremity. The award ran for 56.16 weeks from March 26, 2006 through April 23, 2007. Appellant did not receive wage-loss compensation during the period of the schedule award, but she began receiving wage-loss compensation for disability on the supplemental rolls, effective August 16, 2010, and on the periodic rolls, effective September 25, 2011.

In a preliminary overpayment determination dated August 3, 2022, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$66,412.18, for the period October 1, 2018 through July 16, 2022, because she concurrently received Social Security Administration (SSA) age-related retirement benefits and (FECA) wage-loss compensation benefits. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prerecoupment hearing.

By decision dated September 7, 2022, OWCP finalized the August 3, 2022 preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$66,412.18 for the period October 1, 2018 through July 16, 2022, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery. OWCP required recovery of the overpayment by deducting \$426.41 from appellant's continuing compensation payments every 28 days.

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

On December 19, 2022 OWCP provided appellant with a Form EN-1032 and informed her that federal regulations required her to report any earnings received or employment performed

during the previous 15 months. It notified her that she was required to fully answer all questions on the Form EN-1032 and return it within 30 days, or her benefits would be suspended pursuant to 20 C.F.R. § 10.528. OWCP mailed the letter to appellant's address of record. Appellant did not respond to OWCP's request.

By decision dated February 17, 2023, OWCP suspended appellant's wage-loss compensation benefits, effective that date, due to her failure to submit the Form EN-1032 as requested. It noted that she had not responded to its December 19, 2022 request for a completed EN-1032 form. OWCP advised that, if appellant completed and returned an enclosed copy of the Form EN-1032, it would reinstate her wage-loss compensation benefits retroactive to the date of suspension.

### **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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective February 17, 2023, due to her failure to submit a Form EN-1032 as requested.

On December 22, 2022 OWCP provided appellant with a Form EN-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 form within 30 days, her benefits would be suspended. The record reflects that OWCP's letter was sent to appellant's last known address of record and there is no indication that it was returned as undeliverable.<sup>7</sup>

---

<sup>4</sup> 5 U.S.C. § 8106(b).

<sup>5</sup> 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).

<sup>6</sup> *Id.* *See also P.M.*, Docket No. 16-0382 (issued May 19, 2016).

<sup>7</sup> *See J.H.*, Docket No. 20-0785 (issued October 23, 2020); *Kenneth E. Harris*, 54 ECAB 502 (2003). (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).

As the record establishes that appellant failed to timely submit the Form EN-1032 within 30 days of OWCP's request, the Board finds that OWCP properly suspended her wage-loss compensation benefits, effective February 17, 2023, pursuant to 20 C.F.R. § 10.528.<sup>8</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective February 17, 2023, due to her failure to submit a Form EN-1032 as requested.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 17, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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

---

<sup>8</sup> See *R.B.*, *supra* note 5; *P.M.*, *supra* note 6; *M.W.*, Docket No. 15-0507 (issued June 18, 2015).