

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

K.F., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Pittsburgh, PA, Employer**

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**Docket No. 20-1248
Issued: February 8, 2021**

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 1, 2020 appellant filed a timely appeal from a May 14, 2020 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 May 24, 2020, for failure to complete an EN1032 form as requested.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the May 14, 2020 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

In 1974 appellant, then a 41-year-old air traffic controller, filed an occupational disease claim (Form CA-2) alleging that he sustained a stress-related condition causally related to factors of his federal employment. OWCP accepted the claim for an anxiety reaction and hypertension. It paid appellant wage-loss compensation on the periodic rolls based on his loss of wage-earning capacity beginning March 28, 1995.

OWCP periodically requested that appellant submit financial disclosure statements (Form EN1032) which solicited information about his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

On April 13, 2020 OWCP provided appellant with a Form EN1032 and informed him that federal regulations required him to make an affidavit regarding any earnings received or employment performed during the previous 15 months. It advised that he was required to fully answer all questions on the EN1032 form and return it within 30 days or his 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 May 14, 2020, OWCP suspended appellant's wage-loss compensation benefits, effective May 24, 2020, due to his failure to submit the EN1032 form as requested. It noted that he had not responded to its April 13, 2020 letter. OWCP advised that, if appellant completed and returned an enclosed copy of the EN1032 form, it would reinstate his 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.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; *see also* *R.B.*, Docket No. 20-0176 (issued June 25, 2020); *A.H.*, Docket No. 15-241 (issued April 3, 2015).

⁵ *Id.*

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective May 24, 2020, for failure to complete an EN1032 form as requested.

On April 13, 2020 OWCP provided appellant with the EN1032 form and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It properly notified him that, if he did not completely answer all questions and return the form within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was sent to appellant's address of record and there is no indication that it was returned as undeliverable.⁶ 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.⁷

Appellant failed to timely submit the EN1032 form within 30 days of OWCP's request. He was receiving wage-loss compensation and was, therefore, required to complete the EN1032 form.⁸ Appellant's failure to file an EN1032 form within 30 days properly resulted in the suspension of his wage-loss compensation. Thus, the Board finds that OWCP properly suspended his wage-loss compensation benefits, effective May 24, 2020, pursuant to 20 C.F.R. § 10.528.⁹

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective May 24, 2020, for failure to complete an EN1032 form as requested.

⁶ See *J.H.*, Docket No. 20-0785 (issued October 23, 2020); *Kenneth E. Harris*, 54 ECAB 502 (2003).

⁷ *Id.*

⁸ See *R.S.*, Docket No. 20-0580 (issued September 14, 2020); *A.S.*, Docket No. 17-1530 (issued November 7, 2017).

⁹ See *R.B.*, *supra* note 4; *P.M.*, Docket No. 16-0382 (issued May 19, 2016); *M.W.*, Docket No. 15-0507 (issued June 18, 2015).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2021
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