

FACTUAL HISTORY

On October 25, 1985 appellant, then a 43-year-old clerk, filed an occupational disease claim alleging that she sustained tendinitis causally related to factors of her federal employment. The Office accepted the claim, assigned file number 10-0352075, for bilateral carpal tunnel syndrome. Appellant received compensation for intermittent periods of total disability from the Office under the name of Julia Andrews, social security number (SSN) 348-62-XXXX.¹

Appellant filed a claim for compensation on account of traumatic injury (Forms CA-7) requesting compensation from January 2 to December 30, 1987. She indicated on the form that she had not received any salary during the time period claimed.

On August 1, 1989 appellant signed an affidavit of earnings and employment (Form CA-1032) covering the prior 15-month period, which advised that she must report all employment or self-employment from which she received wages or other income and must report what she was paid for any employment. The form advised appellant that false or evasive answers or omissions may be grounds for forfeiting her compensation and could subject her to criminal prosecution. In response to a question on the form regarding whether she was employed, appellant listed her work for the employing establishment from April 9, 1979 onwards.

Appellant submitted a claim for compensation on account of disability (Form CA-8) covering the period January 13 to 26, 1990. She reported only her work with the employing establishment on the form. She also submitted a Form CA-8 dated May 18, 1990, requesting compensation for the period April 9 through May 11, 1990. Appellant did not report any salaried or self-employment on the Form CA-8, stating that it was not applicable. She submitted additional CA-8 forms requesting compensation for partial disability for the period October 3 to 30, 1992. Appellant listed her part-time work at the employing establishment on the CA-8 forms.

The record establishes that the Office paid appellant compensation for either total or partial disability during the periods May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 through 30, 1992.

In a letter dated September 25, 2000, an inspector for the employing establishment informed the Office that appellant “admitted she failed to report she was gainfully employed as required” when submitting CA-1032, CA-7 and CA-8 forms to the Office and did not inform the Office that she used more than one name and SSN. In an investigative memorandum of the same date, the inspector related that appellant worked for other federal agencies under the name Julia Peters or Julia Tippen with a SSN of 438-64-XXXX. He indicated that appellant worked for the Department of Veterans Affairs (DVA) from October 5, 1987 through September 2, 1988 and September 20, 1992 through January 22, 1993. The inspector further related that on an application for federal employment (SF-171) dated May 28, 1992, appellant listed self employment as a “child care service worker earning \$240.00 per week during the period

¹ Appellant has another claim, assigned file number 10-0386073, currently before the Board under Docket No. 04-1995. The issues in Docket No. 04-1995 are forfeiture of compensation, fact of overpayment and fault.

October 1988 through October 1991.” He also noted that appellant signed a consent for disclosure of wage information on August 13, 1991 without revealing that she worked under another name or SSN.

In a memorandum of interview dated August 25, 2000, an inspector related that appellant stated that she applied for a new SSN in 1976 because she did not want to apply for a job in Illinois with a SSN from the South and wanted to hide from an ex-husband. The investigator stated:

“[Appellant] acknowledged that when she worked for the Veterans Administration during October through December 1987 and from September 1992 through January 1993, she was also employed by the [employing establishment]. [Appellant] reviewed 13 CA-7 and CA-8 [f]orms and initialed and dated each form acknowledging that she had completed and signed these forms. When asked if she knew she was supposed to report her VA employment and income on the CA-7s and CA-8s, [she] initially stated ‘I understand.’ [Appellant] repeated ‘I understand’ several times after I repeatedly asked her if she realized she was supposed to report her VA employment and income on the forms.

“She said she worked at the VA while she claimed [Office] benefits because she needed money and thought [the Office] was slow in getting her any money. [Appellant] later stated that she thought she only had to report [employing establishment] earnings on the CA-7s and CA-8s. [Appellant] did acknowledge she received income from VA and did not report the income when she completed the CA-7s and CA-8s during December 1987 and September 1992 through January 1993.”

The inspector noted that appellant resigned from federal employment on January 22, 1993.

In a signed Form SF-171 dated May 26, 1992, appellant listed employment with the DVA from September 1987 to October 1988 and self-employment as a child care provider from October 1988 through October 1991 earning \$240.00 a week. Appellant used the name Julia Peters with a SSN of 438-64-XXXX on the form.

Appellant submitted a form to the Office dated February 27, 2002 in which she indicated that she worked for the DVA from January to December 1987 and October 1992 to January 1993.

By decision dated March 12, 2003, the Office found that appellant forfeited her entitlement to compensation from January 2 through December 30, 1987, May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 through 30, 1992. The Office found that appellant knowingly failed to report earnings from employment on Forms CA-7, CA-8 and CA-1032 for the periods in question.

On March 12, 2003 the Office notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$28,937.25 because she forfeited

entitlement to compensation for the periods January 2 through December 30, 1987, May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 through 30, 1992. The Office found that appellant was at fault in creating the overpayment because she knowingly omitted earnings on CA-7, CA-8 and CA-1032 forms for the periods in question.

On April 7, May 10 and 25, 2003 appellant requested a preresoupment hearing and an oral hearing on the forfeiture decision.

Appellant submitted a statement to the hearing representative dated November 17, 2003. She related that a notice of recurrence of disability (Form CA-2a) stated that she should complete Part C of the form only if not employed with the federal government. Appellant asserted that based on the Form CA-2a she believed that she should not list federal employment when claiming compensation on Office forms when she sustained a recurrence of disability. Appellant further related that she listed child care work from October 1988 through October 1991 on her SF-171 when applying for employment with the DVA “for employment purposes only.” Appellant maintained that she did not perform self-employment but instead cared for her daughter’s children when she was “physically able and available.” She related that she provided a rate of pay for her services so that her daughter could deduct the expenses on her income taxes. Appellant acknowledged working at the DVA in 1987, 1988 and 1992 but stated that she did not violate her physical restrictions. She stated that she initially believed that the inspectors with the employing establishment were verifying her years of employment in connection with her application for disability retirement.

Appellant provided an affidavit dated November 18, 2003 in which she related that she was not self-employed in child care as stated on her SF-171 dated May 28, 1992. She also provided an affidavit from friends who stated that she did not provide child care and from her daughter, Fanita E. Tippen, who related that appellant did not charge her for providing occasional child care.

At the hearing, held on November 18, 2003 appellant related that she worked at the DVA under a different SSN number than the one she used at the employing establishment because she did not want to work in Illinois with a southern SSN. Appellant related that she did not disclose her work at the DVA to the Office because she believed based on Part C of the Form CA-2a that she was not required to report employment with the federal government.² Appellant also asserted that she was not self-employed in child care and discussed the affidavits she submitted in support of her assertion. Appellant noted that she retired on disability with a service credit of 34 years based on the work under both SSNs. Appellant stated that she was not at fault in failing to report her DVA employment because she thought that her federal jobs “would have been a matter of record” and based on her understanding of the reporting requirements of the Form CA-2a. Appellant also stated that the tax records she submitted established that she did not perform self-employment as a child care provider.

² Part C of the Form CA-2a provides that it is “To be completed by the employee if not employed with the Federal Government at the time of a claimed recurrence of disability attributed to an occupational injury or illness sustained while [f]ederally employed.”

In a decision dated February 9, 2004, the Office hearing representative affirmed the March 12, 2003 forfeiture decision, as modified to reflect that appellant did not forfeit compensation for the period January 2 through December 30, 1987. The hearing representative found that the Form CA-7 completed by appellant for the period January 2 through December 30, 1987 was insufficient to place her on notice that she had to report all employment.³ He affirmed the finding that appellant forfeited compensation for the periods May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 to 30, 1992. The hearing representative finalized the finding that appellant received an overpayment of compensation, as modified based on the revised periods of forfeiture, in the amount of \$28,486.03. He found that she was at fault in the creation of the overpayment and thus not entitled to waiver. The hearing representative noted that appellant had claimed entitlement to a schedule award and remanded the case for the Office to determine whether she was due a schedule award and, if so, to determine repayment while minimizing financial hardship. He noted that if the Office found that appellant was not entitled to a schedule award it should require that appellant repay the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of the Federal Employees' Compensation Act provides that an employee who "fails to make an affidavit or report when required or knowingly omits or understates any part of his earnings, forfeits his right to compensation with respect to any period for which the affidavit or report was required."⁴

The Board has held that it is not enough merely to establish that there were unreported earnings or unemployment. Appellant can be subjected to the forfeiture provision of 5 U.S.C. § 8106(b) only if she "knowingly" failed to report employment or earnings.⁵ The term "knowingly" as defined in the Office's implementing regulation, means "with knowledge, consciously, willfully or intentionally."⁶ The Board has held that the Office can meet this burden of proof in several ways, including appellant's own admission to the Office that she failed to report employment or earnings which she knew she should report or establishing that appellant has pled guilty to violating applicable federal statutes by falsely completing the affidavits in the Form CA-1032.⁷

³ The Board has held that the language of the Form CA-7 relevant to this period is not specific enough to reasonably put an injured employee on notice that he or she had to report all earnings; *see Linda I. Coggins*, 51 ECAB 300 (2000).

⁴ 5 U.S.C. § 8106(b)(1) and (2).

⁵ *Barbara L. Kanter*, 46 ECAB 165 (1994).

⁶ 20 C.F.R. § 10.5(n).

⁷ *Barbara L. Kanter*, *supra* note 5.

ANALYSIS -- ISSUE 1

The hearing representative determined that appellant forfeited her entitlement to compensation from May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 to 30, 1992. Regarding the period May 1, 1988 through August 1, 1989, appellant signed a Form CA-1032 on August 1, 1989 covering the period May 1, 1988 through August 1, 1989. She listed on the form only her work for the employing establishment. An investigative report, however, revealed that she worked from October 5, 1987 to September 2, 1988 at the DVA. Appellant listed work for the DVA from September 1987 to October 1988 on an application for federal employment dated May 26, 1991. She further listed on the SF-171 self-employment in child care services from October 1988 through October 1991, earning \$240.00 per week. Appellant argued that she did not provide child care as stated on the application form but only listed it to improve her chances of being hired permanently by the DVA. In support of her argument, appellant submitted an affidavit from friends who stated that she did not provide child care and a statement from her daughter who asserted that appellant did not charge her for child care. Appellant's contention that she did not provide child care as indicated on the SF-171, however, is not credible given that the SF-171 provides that a false statement on the form may result in a "fine or imprisonment." By signing the SF-171, appellant certified that her statements were "true, correct, complete and made in good faith." The Board finds that the evidence clearly establishes that appellant had undisclosed earnings during the time covered by the August 1, 1989 Form CA-1032. The Board has held that when a Form CA-1032 is improperly completed resulting in a forfeiture of compensation, the period of the forfeiture is the entire 15-month period covered by the form in question, even if he or she had no earnings during a portion of the period.⁸

Regarding the periods January 22 and 23, 1990 and April 9 to 27, 1990, appellant signed CA-8 forms requesting compensation during these periods. She either denied working or listed only her work for the employing establishment on the CA-8 forms covering these periods. As discussed above, however, the record establishes that appellant had earnings from working as a child care provider under a different name and SSN during this period. The Board, therefore, finds that appellant had earnings, which she did not disclose on CA-8 forms covering the periods January 22 and 23, 1990 and April 9 through 27, 1990.

For the period October 3 to 30, 1992, appellant completed CA-8 forms requesting compensation and indicated on the forms only that she worked part-time at the employing establishment. By appellant's own admission, however, she worked from September 20, 1992 to January 22, 1993 at the DVA. She, therefore, had earnings, which she did not disclose on CA-8 forms covering the period October 3 to 30, 1992.

The Office has the burden of proof to establish that a claimant did, either with knowledge, consciously, willfully or intentionally, fail to report earnings from employment. In this case, appellant signed Form CA-1032 on August 1, 1989 which advised her that she must report both all employment and all earnings from employment and self-employment. The CA-1032 forms clearly state that "a false or evasive answer to any questions or omission of any

⁸ *Martin James Sullivan*, 50 ECAB 158 (1998).

answer, may be grounds for forfeiture of your compensation benefits and subject you to criminal prosecution.” Additionally, appellant submitted numerous CA-8 forms, which clearly state that appellant should report any earnings from employment. They advise the signer that any person who knowingly makes “any false statement, misrepresentation, concealment of fact or any other act of fraud” in order to obtain compensation under the Act is subject to various civil, administrative and criminal penalties. Specifically, Form CA-8 requires that the injured employee provide certain information if he or she “worked anywhere” during the period of compensation claimed.⁹ Moreover, appellant initially told inspectors with the employing establishment that she knew that she should have reported her employment with the DVA. The fact that she worked for the DVA and as a child care provider under a different name and SSN than the name and SSN she used to obtain compensation benefits from the Office provides further evidence that she intended to conceal her earnings. The factual circumstances of record, including appellant’s acknowledgement that she failed to submit the necessary information, her signing of strongly worded certification clauses on the Form(s) CA-1032 and CA-8 and her use of a name and SSN, which differed from the name she used in order to obtain compensation from the Office, provide persuasive evidence that she “knowingly” understated her earnings and employment information.¹⁰ The Office, therefore, properly found that appellant forfeited her compensation for the periods May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 to 30, 1992.

On appeal appellant maintains that she interpreted language on the Form CA-2a to mean that she did not have to report federal employment. The Form CA-2a is a notice of recurrence of disability rather than a claim for compensation or a statement of earnings and employment. The clear language of the Form CA-1032 and Form CA-8 requires disclosure of all employment and earnings.

Appellant further alleges on appeal that her tax returns establish that she did not perform work as a child care provider. Appellant also contends that the fact that she has now signed an affidavit stating that she did not work providing child care should be given weight. As noted above, appellant’s contention that she did not perform work providing child care from October 1988 through October 1991, even though she listed such employment on a May 26, 1992 SF-171 is not credible given the penalty stated on the form of a fine or imprisonment for falsely completing the employment application. Appellant, by placing her signature on the SF-171, certified that she completed the form truthfully and in good faith. The fact that she may not have included her earnings as a child care provider on income tax returns is not dispositive of whether she performed the work in question, particularly in view of the fact that she worked under more than one name and SSN.

⁹ Item No. 9 on Form CA-8 requests information about salaried employment and commission and self-employment, including name and address of business or employer, dates and hours worked, pay rate, total amount earned or income derived and type of work activity performed. With respect to commission and self-employment, Form CA-8 instructs the employee to “show all activities, whether or not income resulted from [such] efforts.”

¹⁰ See generally *Robert C. Gilliam*, 50 ECAB 334 (1998).

LEGAL PRECEDENT -- ISSUE 2

Section 10.529 of the Office's implementing regulation provides as follows:

“(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

“(b) Where the right to compensation is forfeited, [the Office] shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. [§] 8129 [recovery of overpayments] and other relevant statutes.”¹¹

ANALYSIS -- ISSUE 2

If a claimant has any earnings during a period covered by a Form CA-1032 (or Form CA-8) which he or she knowingly fails to report, he or she is not entitled to any compensation for any portion of the period covered by the report, even though he or she may not have had earnings during a portion of that period.¹² The Office paid appellant compensation from May 1, 1988 through August 1, 1989 in the amount of \$26,187.59, from January 22 and 23, 1990 in the amount of \$175.82, April 9 through 27, 1990 in the amount of \$1,242.84 and October 3 through 30, 1992 in the amount of \$880.68, for a total of \$28,486.93. As appellant forfeited compensation for this period because she omitted earnings and employment on CA-1032 and CA-8, forms covering these periods, there exists an overpayment of compensation in the amount of \$28,486.93.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(b) of the Act¹³ provides that “[a]djustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.” Section 10.433 of the Office's implementing regulation¹⁴ provides that in determining whether a claimant is at fault, the Office will consider all pertinent circumstances. An individual is with fault in the creation of an overpayment who:

“(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

¹¹ 20 C.F.R. § 10.529.

¹² *Louis P. McKenna, Jr.*, 46 ECAB 328 (1994).

¹³ 5 U.S.C. § 8129(b).

¹⁴ 20 C.F.R. § 10.433.

“(2) Failed to provide information which he or she knew or should have known to be material; or

“(3) Accepted a payment which he or she knew or should have known to be incorrect.”

ANALYSIS -- ISSUE 3

In this case, the hearing representative found that appellant was at fault in the creation of the overpayment because she failed to provide information which she knew or should have know to be material on CA-1032 and CA-8 forms for the periods May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 to 30, 1992. The record establishes that appellant had unreported earnings from employment during these periods and knowingly failed to furnish this material information to the Office. Appellant signed a certification clause on a CA-1032 form dated August 1, 1989. The certification clause advised her that she might be subject to civil, administrative or criminal penalties if she knowingly made a false statement or misrepresentation or concealed a fact to obtain compensation. Thus, by signing the form, appellant is deemed to have acknowledged her duty to fill out the form properly, including the duty to report any employment or self-employment activities and income. She further signed CA-8 forms covering the periods January 22 and 23, 1990, April 9 through 27, 1990 and October 3 through 30, 1992, which indicated that she worked only for the employing establishment. The CA-8 forms provided that she was subject to felony criminal prosecution for knowingly making a false statement or misrepresentation. Appellant initially told inspectors that she was aware that she should have reported her earnings and employment on the Office forms. She further worked under a name and SSN, which differed from the name and SSN she used to obtain workers' compensation benefits from the Office.¹⁵ The evidence of record, therefore, shows that appellant was aware or should have been aware of the materiality of the information that she had earnings which she had not listed on the relevant forms. As she failed to provide information to the Office regarding her employment during the periods covered by the forms, the Board finds that she is at fault in creating the overpayment based on her forfeiture of compensation for these periods and is not entitled to waiver of record in the amount of \$28,486.23.¹⁶

CONCLUSION

The Board finds that appellant forfeited her entitlement to compensation for the periods May 1, 1988 through August 1, 1989, January 22 and 23, 1990, April 9 through 27, 1990 and October 3 through 30, 1992, because she knowingly failed to report earnings from employment. The Board further finds that appellant received an overpayment of compensation in the amount

¹⁵ See *Lewis George*, 45 ECAB 144 (1993).

¹⁶ The issue of recovery of the overpayment is not before the Board as the hearing representative remanded the issue back to the Office. The Board's jurisdiction of recovery of an overpayment is limited to those cases where the Office seeks recovery from continuing compensation benefits under the Act. In this case, appellant is no longer receiving wage-loss compensation and, therefore, the Board does not have jurisdiction with respect to recovery of the overpayment under the Debt Collection Act. See *Robert S. Luciano*, 47 ECAB 793 (1996).

of \$28,486.23 during the period of the forfeiture. The Board finds that the Office properly found that appellant was at fault in the creation of the overpayment and thus not entitled to waiver.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 9, 2004 is affirmed.

Issued: February 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member