

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

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**DONALD L. OVERSTREET, Appellant** )

**and** )

**DEPARTMENT OF TRANSPORTATION, )  
FEDERAL AVIATION ADMINISTRATION, )  
Hampton, GA, Employer** )

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**Docket No. 04-379  
Issued: February 11, 2005**

*Appearances:*  
*Donald L. Overstreet, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 26, 2003 appellant filed a timely appeal from the September 23, 2003 merit decision of the Office of Workers' Compensation Programs, which determined that he received an overpayment of \$372,390.32. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the amount of the overpayment.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly calculated that appellant received an overpayment of \$372,390.32.

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<sup>1</sup> The Office's September 23, 2003 decision is the only decision the Board may review on this appeal.

## **FACTUAL HISTORY**

On the prior appeal of this case,<sup>2</sup> the Board modified the Office's October 24, 2001 overpayment decision to reflect that appellant forfeited his compensation from August 7, 1987 to November 18, 1989 and from December 22, 1989 to October 9, 1995. The Board found that appellant was at fault in creating this overpayment and was therefore not entitled to waiver. Given the modified period of forfeiture, the Board remanded the case to the Office for a recalculation of the amount of the overpayment.

In a decision dated September 23, 2003, the Office found that the amount of the overpayment was \$372,390.32.<sup>3</sup> The Office requested that appellant forward a check in that amount and advised that payment was due within 30 days. The Office further advised: "If you are unable to refund the entire overpayment immediately, please contact this office within 30 days so that appropriate arrangements for recovery (such as installment payments) can be made."

## **LEGAL PRECEDENT**

Section 8106(b) of the Federal Employees' Compensation Act provides in pertinent part:

"An employee who –

- (1) fails to make an affidavit or report when required; or
- (2) 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. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section."<sup>4</sup>

## **ANALYSIS**

On remand the Office collected a computerized itemization of all the compensation payments made to appellant during the periods of forfeiture. The Board has thoroughly reviewed this itemization and finds that the gross compensation paid from August 7, 1987 to November 18, 1989 and from December 22, 1989 to October 9, 1995 amounts to \$372,390.32, exactly the figure the Office calculated. The Board will affirm the Office's September 23, 2003 decision.

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<sup>2</sup> Docket No. 02-506 (issued July 7, 2003).

<sup>3</sup> The Office inadvertently indicated that appellant forfeited compensation from August 7, 1987 to November 18, 1989 and from December 22, 1989 to October 9, "1985." This last date, a typographical error that did not affect the amount of the overpayment calculated, should have read October 9, "1995."

<sup>4</sup> 5 U.S.C. § 8106(b). The Board currently has no jurisdiction over the issue of recovery, as the Office's September 23, 2003 decision set no rate of recovery from continuing compensation.

**CONCLUSION**

The Office properly calculated that appellant received an overpayment of \$372,390.32.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member