



In accord with established Office procedure, appellant was required to complete Form EN1032 questionnaire forms regarding his earnings and employment activity for the previous 15 months. The form explained that a claimant must report all self-employment or involvement in any business enterprise, including, but not limited to, farming, sales work, operating a business or providing services in exchange for money, goods or other services. In addition, the EN1032 advised the employee that, if duties were performed in any business enterprise for which he or she was not paid, he was to report the rate of pay it would have cost to hire someone to perform such duties. On EN1032 forms signed on April 1, 1996, April 21, 1997, April 16, 1999, April 5, 2000, April 4, 2001, April 9, 2002, April 3, 2003, April 7, 2004 and July 22, 2005 appellant indicated that he had no self-employment or business enterprise involvement for the previous 15 months.

On May 7, 2007 the Office received an investigative memorandum dated May 1, 2007 from the Office of the Inspector General (OIG). The evidence included a December 6, 2006 report from the employing establishment's criminal investigation division. According to the OIG report, appellant had received subsidies from the Department of Agriculture (USDA) in 1995, 1996 and 1999 to 2003. A farm subsidy database reported that appellant had received subsidies for livestock feed and livestock emergency assistance. In the years 2000 and 2002 to 2004, sale of cattle were recorded under appellant's name. The last cattle sale in 2004 was reported as April 16, 2004. The December 6, 2006 report stated that appellant was interviewed on September 26, 2006 and he "admitted he sold cattle for profit, but stated that his family cooperatively raised the livestock and had done so since the 1970's. He stated profits from the sale of cattle were divided equally among approximately eight family members."

By letter dated May 25, 2007, the Office advised appellant of the findings in the investigative reports and requested additional information. In a June 11, 2007 response, appellant asserted his brothers had sold cattle, but he himself had never sold cattle. He stated he was not involved with his brothers because he could not do the work.

By decision dated September 27, 2007, the Office determined that appellant had forfeited his right to compensation for the periods January 1, 1995 to April 21, 1997, January 16, 1998 to April 7, 2004 and April 22, 2004 to July 22, 2005.

### **LEGAL PRECEDENT**

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

"The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at times the Secretary specifies.... An employee who --

- (1) fails to make an affidavit or report when required; or
- (2) knowingly omit 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 ... under section 8129 of this title, unless recovery is waived under that section.”<sup>1</sup>

The Office’s regulations provide “Earnings from employment or self-employment means:

“(1) Gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or

“(2) A reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual’s responsibility to report the estimated cost to have someone else perform his or her duties.”<sup>2</sup>

### ANALYSIS

The forfeiture determination in this case is based on the submission of specific EN1032 forms. On these forms appellant denied any self-employment or involvement in a business enterprise, and reported no earnings for the previous 15 months. With respect to the forms completed on April 1, 1996, April 21, 1997 and April 16, 1999 the evidence of record supports a finding that appellant failed to report earnings. In 1995, 1996 and 1999, appellant received Department of Agriculture subsidies for livestock-related expenses. A subsidy is a benefit provided by the government to a work enterprise.<sup>3</sup> As noted above, reimbursed expenses are considered earnings from employment or self-employment. The subsidies are remuneration to appellant and the value of such remuneration constitutes earnings.<sup>4</sup> The EN1032 requires that earnings from self-employment or a business enterprise be reported, and for the years 1995, 1996 and 1999 appellant failed to report earnings.

With respect to EN1032 forms completed in April of the years 2000 through 2004, the evidence also supports a finding that appellant failed to report earnings. Appellant received USDA livestock subsidies in the years 2000 through 2003, according to the evidence of record. In addition, there were sales of cattle in appellant’s name in 2000 and from 2002 through April 16, 2004. According to appellant, these sales were made by his brothers, but the evidence from the stockyard that conducted the sales reported the sales in appellant’s name. None of these earnings were reported on the EN1032 forms.

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<sup>1</sup> 5 U.S.C. § 8106(b).

<sup>2</sup> 20 C.F.R. § 10.5(g) (April 2007).

<sup>3</sup> A subsidy is defined as a “grant of money made by the government in aid of the promoters of any enterprise, work or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public.” *Black’s Law Dictionary* (5<sup>th</sup> ed. 1979).

<sup>4</sup> As the Board explained in *Christine P. Burgess*, 43 ECAB 449 (1992), every form of remuneration, including reimbursed expenses and similar benefits, must be reported as earnings.

The Board notes that the Office also forfeited compensation for the 15-month period prior to a July 22, 2005 EN1032. The forfeiture in this case appeared to be based on the sale of cattle in 2004. But the documents of cattle sales reported the last sale in 2004 was on April 16, 2004. The period covered by the July 22, 2005 EN1032 began on April 22, 2004. The Office did not document any earnings during this period. There was no evidence of subsidies, cattle sales or any unreported remuneration. The Board accordingly finds the evidence does not support a forfeiture of compensation for the period April 22, 2004 to July 22, 2005.

Since the evidence does establish appellant omitted earnings, the remaining question is whether the omission was “knowingly.” The term “knowingly” is defined in the regulations governing administration of claims filed under the Act as “[w]ith knowledge, consciously, willfully, or intentionally.”<sup>5</sup> The language in the EN1032 is clear and unambiguous regarding self-employment and specifically includes farming. The USDA subsidies were a direct payment to appellant and he offered no explanation as to why he did not report the earnings. As to the cattle sales, appellant appeared to indicate to the investigators that, since he split the proceeds with family members, he did not believe he needed to report the earnings. There is no language in the EN1032 suggesting that income divided among family members need not be reported. The form states that even if appellant did not receive any direct payment for work benefiting a family member in a business enterprise, the value of the work must be reported.

Based on the probative evidence, the Board finds that appellant knowingly omitted earnings on the EN1032 forms from April 1, 1996 to April 21, 1997 and April 16, 1999 to April 7, 2004. Pursuant to 5 U.S.C. § 8106(b), the Office properly forfeited his compensation.

### **CONCLUSION**

Appellant forfeited his compensation from January 1, 1995 to April 21, 1997 and January 16, 1998 to April 7, 2004 because he knowingly omitted earnings. For the period April 22, 2004 to July 22, 2005, the evidence was not sufficient to establish a forfeiture of compensation was warranted.

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<sup>5</sup> 20 C.F.R. § 10.5(n).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 27, 2007 is affirmed with respect to the periods January 1, 1995 to April 21, 1997 and January 16, 1998 to April 7, 2004. The September 27, 2007 decision is reversed with respect to the period April 22, 2004 to July 22, 2005.

Issued: June 3, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board