

FACTUAL HISTORY

This case has previously been before the Board.³ Appellant, a 57-year-old former pipe insulator, has an accepted claim for concussion, cervical strain and temporomandibular joint dysfunction, which occurred on November 10, 1980. He stopped work on December 17, 1985. In March 1986, OWCP placed appellant on the periodic compensation rolls and he continued to receive disability compensation for almost two decades.⁴

In January 1998, appellant started a handyman services business, which he and his wife later incorporated under the name of Repairs With Care Home Service, Inc. (RWC),⁵ which remained in business through the latter part of 2004.

OWCP periodically received financial disclosure statements Form CA-1032 from appellant. While appellant informed OWCP of his involvement with the family-owned business, he failed to report earnings from his work with RWC.⁶ He would later acknowledge that he intentionally omitted his RWC earnings so that OWCP would not reduce his wage-loss compensation.

Based on misinformation provided on Form CA-1032, appellant was indicted under 18 U.S.C. § 1920 for making false statements to obtain federal employees' compensation benefits. On November 20, 2006 he pled guilty to one count of knowingly and willfully making materially false and fraudulent written representations in connection with the receipt of FECA benefits. Appellant received a sentence of five years probation. He was also ordered to make restitution to the Department of Labor (DOL) in the amount of \$45,119.29.

As a consequence of his fraudulent activity, OWCP terminated appellant's compensation and medical benefits pursuant to 5 U.S.C. § 8148(a).⁷ It also found that he forfeited his right to compensation for the period December 3, 1996 through October 29, 2005. Appellant had received \$302,146.88 in wage-loss compensation for the period in question, which OWCP declared an overpayment. He was found at fault in creating the overpayment, and thus, he was not entitled to waiver of recovery. OWCP credited appellant \$45,119.29 for court-ordered restitution.

³ Docket No. 08-2425 (issued August 3, 2009).

⁴ Appellant received wage-loss compensation through October 29, 2005.

⁵ Appellant's 1998 federal income tax records (Form 1040) showed that he was self-employed as a handyman, with calendar year gross business receipts of \$41,757.00.

⁶ Appellant filed Form CA-1032 on March 3, 1998, September 20, 1999, April 9, 2001, June 3, 2002 and February 18, 2003. On each of the above-noted forms, he reported a \$0.00 rate of pay and \$0.00 actual earnings with respect to his handyman business activities.

⁷ Any individual convicted of a violation of section 1920 of title 18 or any other federal or state criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or subchapter III of this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129. 5 U.S.C. § 8148(a).

When the case was previously on appeal, the Board disagreed with OWCP's determination that appellant forfeited compensation for the entire period December 3, 1996 to October 29, 2005. Instead, the Board found that appellant forfeited compensation for the period December 3, 1996 to March 3, 1998, June 20, 1998 to September 20, 1999 and January 9, 2000 to February 18, 2003.⁸ The wage-loss compensation appellant received during that timeframe was properly declared an overpayment. The Board further found that he was at fault in creating the overpayment, and therefore, he was not eligible for a waiver of recovery. Because the record was unclear regarding the amount of compensation appellant received during the above-noted periods, the Board remanded the case for OWCP to calculate the amount of overpayment. The Board's August 3, 2009 decision is incorporated herein by reference.⁹

On remand, OWCP calculated a forfeiture/overpayment of \$185,222.30 for the period December 3, 1996 to March 3, 1998, June 20, 1998 to September 20, 1999 and January 9, 2000 to February 18, 2003. This figure was derived by subtracting the compensation paid for the excluded periods from the previous overpayment figure of \$302,146.88.¹⁰ OWCP also noted various credits, including \$45,119.29 for court-ordered restitution.

By decision dated August 9, 2010, OWCP found that appellant had an outstanding overpayment of \$98,334.88.¹¹

LEGAL PRECEDENT

A partially disabled employee may be required to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times specified by OWCP.¹² If an employee knowingly omits or understates any earnings or work activity in making a report, he shall forfeit the right to compensation with respect to any period for which the report was required.¹³ Forfeiture results in an overpayment of compensation for the period of the forfeiture and is subject to recovery under 5 U.S.C. § 8129.¹⁴

⁸ The forfeiture/overpayment was justified based on CA-1032 forms dated March 3, 1998, September 20, 1999, April 9, 2001, June 3, 2002 and February 18, 2003. Each Form CA-1032 covered a 15-month period prior to the date signed by appellant. The Board set aside OWCP's finding with respect to forfeiture/overpayment for the period March 4 to June 19, 1998, September 21, 1999 to January 8, 2000 and February 19, 2003 to October 29, 2005 because the record did not include any corresponding Form CA-1032 forms or other evidence to support forfeiture for those periods.

⁹ The Board subsequently denied reconsideration by order dated November 19, 2009 (Docket No. 08-2425).

¹⁰ For the periods excluded by the Board, OWCP deducted a total of \$116,924.58.

¹¹ The overpayment balance reflected the above-noted court-ordered restitution and a credit of \$44,555.06 for funds OWCP obtained from the Office of Personnel Management (OPM) through garnishment of appellant's disability annuity. Appellant also received a \$37.60 credit because of a discrepancy regarding the total compensation awarded from December 3, 1996 through October 29, 2005. The \$98,334.88 balance also included what appears to be accrued interest at one percent.

¹² 5 U.S.C. § 8106(b); 20 C.F.R. § 10.525.

¹³ *Id.*; *Id.* at § 10.529(a).

¹⁴ *Id.*; *Id.* at § 10.529(b).

ANALYSIS

In its August 3, 2009 decision, the Board found that appellant forfeited his compensation for the period December 3, 1996 to March 3, 1998, June 20, 1998 to September 20, 1999 and January 9, 2000 to February 18, 2003, which resulted in an overpayment of compensation. The Board remanded the case to OWCP for a determination of the amount of benefits appellant received during the forfeiture period. On remand, OWCP determined that appellant received \$185,222.30 in compensation benefits during the specified period.

On appeal, counsel did not present any evidence or argument that would warrant revisiting the Board's prior determination that appellant forfeited his wage-loss compensation for the period December 3, 1996 to March 3, 1998, June 20, 1998 to September 20, 1999 and January 9, 2000 to February 18, 2003. Moreover, he did not specifically challenge OWCP's finding that appellant received \$185,222.30 in compensation for the above-noted period. OWCP originally calculated an overpayment of \$302,146.88 for the period December 3, 1996 through October 29, 2005. From that amount, it deducted \$9,419.14 for the excluded period of March 4 to June 16, 1998 and another \$9,746.79 for the excluded period of September 21, 1999 to January 8, 2000. OWCP also deducted \$97,758.65 for the excluded period of February 19, 2003 to October 29, 2005, for a total combined reduction of \$116,924.58. The Board finds that the record supports that appellant received an overpayment of compensation in the amount of \$185,222.30 for the period December 3, 1996 to March 3, 1998, June 20, 1998 to September 20, 1999 and January 9, 2000 to February 18, 2003. Counsel has not challenged the Board's prior findings with respect to fault or waiver of recovery of the overpayment. Accordingly, the Board need not revisit those findings.

Counsel's only argument on appeal is that the court-ordered restitution of \$45,119.29 constituted a global settlement, and thus, represented the extent of appellant's repayment obligation to OWCP regarding the current forfeiture/overpayment.¹⁵ He raised this same argument when the case was previously on appeal. Counsel also previously challenged OWCP's attempt at garnishing appellant's OPM disability benefits. As noted in the Board's August 3, 2009 decision, the scope of the court-ordered restitution and OWCP's efforts to garnish appellant's OPM benefits are essentially debt collection issues, which are beyond the Board's current jurisdiction.¹⁶ As a result of appellant's November 20, 2006 guilty plea and subsequent conviction, he forfeited his right to receive any further benefits under FECA.¹⁷ Because appellant is not currently receiving wage-loss compensation, the Board does not have jurisdiction to consider OWCP's methods for recovering the \$185,222.30 overpayment.¹⁸

¹⁵ Counsel also submitted additional evidence regarding the March 27, 2007 criminal judgment, which included restitution. As previously indicated, *supra* note 2, the Board is precluded from considering evidence that was not before OWCP at the time of its final decision.

¹⁶ See *Joan Ross*, 57 ECAB 694, 703-04 (2006); *Danny E. Haley*, 56 ECAB 393, 402-03, n.34 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.18 (May 2004).

¹⁷ 5 U.S.C. § 8148(a); 20 C.F.R. § 10.17.

¹⁸ *Joan Ross*, *supra* note 16.

CONCLUSION

The Board finds that appellant received an overpayment of \$185,222.30 for the period December 3, 1996 to March 3, 1998, June 20, 1998 to September 20, 1999 and January 9, 2000 to February 18, 2003. OWCP's August 9, 2010 decision incorrectly identified "\$98,334.88" as the amount of the overpayment. Rather than representing the amount of the overpayment, that figure purports to represent the outstanding balance owed OWCP after certain credits and unspecified accrued interest were applied to the \$185,222.30 overpayment.¹⁹ The August 9, 2010 decision is modified to reflect an overpayment of \$185,222.30.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 3, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ As noted, OWCP credited appellant \$37.60 for a calculation discrepancy, \$45,119.29 for court-ordered restitution and \$44,555.06 for funds garnished from appellant's OPM disability annuity, for a total credit of \$89,711.95. These credits would reduce the overpayment balance to \$95,510.35. However, a July 8, 2010 memorandum indicated that OWCP calculated interest at one percent on the outstanding overpayment balance. The exact amount of interest charge is not readily apparent from the record, but if one subtracts the preinterest balance of \$95,510.35 from the reported outstanding balance of "\$98,334.88," it appears that accrued interest totaled \$2,824.53.