



## **FACTUAL HISTORY**

OWCP accepted that on October 25, 2003 appellant, then a 36-year-old computer engineer, sustained multiple head, back and arm conditions due to a fall at work. He stopped work on October 26, 2003 and received total disability compensation on the periodic rolls.<sup>2</sup>

On June 7, 2004 appellant signed a Form CA-7 (Claim for Compensation). In Section 2 of the form, he sought compensation for leave without pay for the period April 19 to May 29, 2004. The form asked appellant whether he had “worked outside your federal job during the period(s) claimed in Section 2” and he answered “no” in response to this question. On June 12, 2004 he signed a Form CA-7 claim for leave without pay for the period May 30 to June 12, 2004. On July 1, 2004 he signed a Form CA-7 in which he claimed wage loss for leave without pay for the period June 13 to 26, 2004. In these forms, appellant again indicated “no” in response to the question regarding whether he had “worked outside your federal job during the period(s) claimed.”

On December 14, 2006 and December 23, 2007 appellant signed EN1032 forms which contained language advising him of the employment activities and earnings that he was required to report for the 15-month period prior to the time he signed each form. On the forms, appellant answered “no” in response to questions asking him whether he had been self-employed or worked for any employer during the past 15 months.

The EN1032 forms instructed appellant to report all employment for which he received a salary, wages, income, sales commissions, piecework or payment of any kind. Appellant was directed to report all self-employment or involvement in business enterprises, including (but not limited to) farming, sales work, operating a business, and providing services in exchange for money, goods or other services. The kinds of services that appellant was required to report included such activities as carpentry, mechanical work, painting, contracting, child care, keeping books and records, odd jobs, and managing and overseeing a business of any kind, including a family business. Such activities had to be reported even if they were part time or intermittent. The EN1032 forms also instructed appellant to report any work or ownership interest in any business enterprise, even if the business lost money or if profits or income were reinvested or paid to other. If appellant performed any duties in a business enterprise for which he was not paid, he had to show as the rate of pay what it would have cost the employer or organization to hire someone to perform the work or duties he did, even if the work was for him or a family member or relative. The forms contained certification clauses which informed him of the consequences of not accurately reporting his employment activities, such as being subjected to criminal penalties and losing the right to receive workers’ compensation.

In an October 6, 2011 memorandum, Joel Parisi, a special agent from the employing establishment’s Office of the Inspector General (OIG), described an investigation that was conducted between early 2008 and late 2011 regarding appellant’s activities while receiving disability compensation. Mr. Parisi discussed various CA-7 forms and EN1032 forms completed by appellant between 2004 and 2007 and concluded that he had work activities and earnings

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<sup>2</sup> Appellant returned to part-time work on January 12, 2004 but stopped work again on April 19, 2004. After his work stoppage he received compensation on the periodic rolls.

during the periods covered by the forms which were not reported on the forms.<sup>3</sup> Mr. Parisi provided summaries of investigative interviews that various special agents carried out beginning in early 2008.<sup>4</sup> The record does not contain transcripts of any of the interviews, whether signed or unsigned, and the summaries do not contain verbatim quotes of any of the questions posed by the interviewers or any significant quotes of the answers provided by the interviewees. Mr. Parisi stated that on May 8, 2008 and June 25, 2009 investigating agents interviewed George Kiriakidi, the owner of Prime Building Group. He noted that Mr. Kiriakidi indicated becoming friends with appellant after being contacted to build a home for him and that appellant visited him on a regular basis and provided services, including working on his computers for free. In connection with his business, Mr. Kiriakidi had computerized assisted design (CAD) drawings of building construction plans made for him and appellant was the primary or only point of contact for the provision of these services. Invoices to pay for these services were submitted in the name of appellant's wife and the invoices directed the checks to be made out to appellant's wife. Mr. Parisi noted that Mr. Kiriakidi reported that he did not know for sure whether the CAD drawings were prepared by appellant or his wife, but he suspected that they were prepared by appellant.

In the October 6, 2011 memorandum, Mr. Parisi also summarized an October 20, 2010 interview that investigating agents conducted with Paul Dietz, III, an engineer for Prime Building Group. He indicated that Mr. Dietz stated that he dealt with appellant for more than two years with respect to the preparation of CAD drawings on behalf of Prime Building Group prior to appellant's wife taking over such duties. Mr. Dietz believed that it took appellant's wife a year or two to become competent enough to complete drawings on her own without appellant's assistance. Mr. Parisi noted that Nicholas Damm, an employee in the finance section of Prime Building Group, was interviewed on October 6, 2009. He noted that appellant used to bill Prime Building Group for his wife's CAD drawings and that appellant asked him about the status of Prime Building Group's payments to his wife. The memorandum also contains a summary of a June 22, 2010 interview of Brian Kuebler, owner of ProAct Environmental, Inc. Mr. Parisi stated that Mr. Kuebler indicated that appellant repaired his computer and that he picked up his computer at appellant's home. Mr. Kuebler paid for this work with a check written out to appellant's wife at the request of appellant. Mr. Parisi indicated that on May 3, 2010 investigating agents interviewed Thomas Farr, II, owner of Jacobs Ladder Painting, Inc. He stated that Mr. Farr indicated that appellant provided computer repair services at his own house and that appellant asked him to make the check for such services payable to appellant's wife because appellant was on disability and could not show any income.

A summary of a May 4, 2010 interview of Gary Lewis, owner of Lucas Construction, noted that appellant asked Mr. Lewis to make check payments for CAD drawings payable to

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<sup>3</sup> It was indicated that, between May 3, 2004 and May 2, 2008, appellant and his wife received \$78,219.15 from their work activities and that this figure was derived from tax forms covering this period which were jointly filed by appellant and his wife.

<sup>4</sup> In his memorandum, Mr. Parisi did not identify the agencies to which the investigating agents belonged, but supporting documents reveal that most of the interviews were conducted by the OIG. Other interviews were conducted by the U.S. Naval Criminal Investigative Service and other bodies. There is no indication in the record that the investigation of appellant ever led to any criminal charges being brought against him. Neither appellant nor his wife were interviewed by the investigating agents.

appellant's wife because appellant was on disability and could not show any income. Mr. Parisi stated that on several occasions investigating agents interviewed Joseph Gartner of Gartner Building Group. Mr. Gartner advised that appellant provided several CAD drawings for him at no charge and that the assistance was so substantial that he was able to let go a draftsman working for his company. Mr. Parisi indicated that on May 8, 2008 and June 25, 2009 investigating agents interviewed Dr. Robert Topkis, a physician with Warminster Medical Associates. He stated that Dr. Topkis indicated that appellant was a friend of his who frequently visited Warminster Medical Associates and sometimes partook in free lunches provided by pharmaceutical company representatives. Dr. Topkis stated that at times appellant repaired Warminster Medical Associates computers and his own smart phone free of charge, but that when appellant was paid for computer repair work the checks were made out to appellant's wife per appellant's request. Mr. Parisi indicated that a total of 16 individuals who were interviewed acknowledged that they sent checks to appellant or his wife for computer or CAD drawing work, but he did not identify all of the individuals in his October 6, 2011 memorandum. Mr. Parisi noted that in February 2008 the employing establishment's Human Resources Department conducted video surveillance of appellant's activities. It was asserted that the video from the surveillance showed appellant engaging in physical activities inconsistent with his accepted work injuries, but there was no claim that the video clearly showed appellant engaging in employment.

OWCP submitted documents in support of Mr. Parisi October 6, 2011 memorandum. The documents include summaries of interviews that investigating agents held with individuals who had contact with appellant and his wife. Some of these summaries pertain to the specific interviewees discussed in the October 6, 2011 memorandum. While a number of these summaries provide greater detail than those provided in the October 6, 2011 memorandum, these documents do not contain transcripts of any of the interviews, whether signed or unsigned, and the summaries do not contain quotes of any of the questions posed by the interviewers or any significant quotes of the answers provided by the interviewees. A number of the interview summaries had copies of checks attached to them, the majority of which are made out to appellant's wife.<sup>5</sup> The record also contains numerous invoices produced by appellant's wife for payment to herself which contain the business name Builders Home Gallery. A number of the checks are made out to appellant, but in most cases there is no indication in the record for what purpose the checks were written. In other cases, the checks were made out to appellant on dates prior to first date of declared forfeiture, *i.e.*, April 19, 2004, or there was an indication in the accompanying interview summaries that the checks were intended to reimburse appellant for computer parts he purchased.<sup>6</sup>

In a February 29, 2012 decision, OWCP found that appellant forfeited his right to compensation for the periods April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007 because he did not report employment and earnings on CA-7 forms and EN1032 forms. OWCP stated that appellant worked in the computer and construction fields and that the CA-7 forms and EN1032 forms advised him of the need to report such employment and earnings.

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<sup>5</sup> The interviewees generally indicated that the checks made out to appellant's wife were for building drawing services she provided them.

<sup>6</sup> The record also contains a number of building drawings. Some of these drawings dated between January and March 2004 appear to contain appellant's initials.

OWCP emphasized the findings of the October 6, 2011 OIG report noting that the report showed that appellant repaired computers and drew construction plans during the periods of forfeiture.

In a February 29, 2012 letter, OWCP advised appellant of its preliminary finding that he received a \$104,333.03 overpayment of compensation because he forfeited compensation for the periods April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007.<sup>7</sup> It also preliminarily found that appellant was at fault in creating the overpayment, thereby precluding waiver of its recovery. OWCP indicated that the CA-7 forms and EN1032 forms completed by appellant advised him that he needed to report employment activities and earnings.<sup>8</sup>

Appellant requested a telephone hearing before an OWCP hearing representative with respect to both OWCP's February 29, 2012 forfeiture decision and its preliminary overpayment finding. At the July 24, 2012 hearing, appellant asserted that he did not perform any work while he received disability compensation. He stated that his wife produced construction plan drawings in connection with her own business and that, when he helped friends with computer work as a hobby, he was only paid for computer parts that he bought himself. Appellant denied that he told anyone that checks should be made out to his wife because he was on disability and could not show income. He asserted that the premise for OWCP finding an overpayment was improper because it improperly forfeited his compensation from April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007.

In a September 6, 2012 letter, counsel submitted signed witness statements showing that appellant did not work during the periods that he received total disability compensation. In a September 6, 2012 statement, appellant's wife asserted that between 2001 and 2005 she became familiar with the CAD software program for drawing and modifying building plans when she and appellant made design changes to the plans provided by Mr. Kiriakidi, the builder they contracted to build their home.<sup>9</sup> She indicated that as some point no later than 2004 she began working with builders to assist them in modifying architectural plans for single family homes. Appellant's wife stated that she worked on her own with the builders and that appellant only provided limited assistance. Because he socialized with many of the builders for which she performed work, appellant would at times pick up and drop off plans, drop off invoices and pick up checks. Appellant's wife stated, "[Appellant] took no active role in the consulting business which I was operating."

In a statement signed on August 20, 2012, Mr. Kiriakidi stated that he had known appellant and his wife for about 10 years. When interviewed by government agents, he advised

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<sup>7</sup> The record contains payment records and worksheets showing that appellant received \$104,333.03 in compensation from April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007.

<sup>8</sup> The record also contains a March 1, 2012 letter in which OWCP indicated that it had made a preliminary determination that he received a \$21,114.19 overpayment of compensation because he was self-employed during the periods June 27, 2004 to September 13, 2005 and December 24, 2007 to June 8, 2008 and received compensation for total disability for these same periods. It does not appear that OWCP issued a final overpayment decision in connection with the March 1, 2012 letter and this matter is not currently before the Board.

<sup>9</sup> Appellant's wife indicated that in the early 2000s appellant assisted a number of builders with modifying building plans without charge, but that on at least one occasion in the early 2000s he sold a builder some plans.

them that he had been told that appellant's wife performed the work. Mr. Kiriakidi stated that he told the agents that he had no way of knowing one way or the other who actually performed the work as he did not see the work being done. He never stated to the agents that appellant wanted the checks to be made out to his wife because he was on disability. In a statement signed on August 20, 2012, Mr. Lucas stated that he told the government agents that he had no knowledge of who made the changes on the house plans and that, because the plans mainly went through Mr. Kiriakidi, he would have more knowledge of who made the changes. He never told the agents that appellant wanted the checks made out to his wife because he was on disability. Mr. Lucas indicated that appellant told him before he sustained his injury that his wife was learning a program for drawing house plans. In a statement signed September 5, 2012, Mr. Farr stated that he met appellant through his landlord and became friendly with him. Appellant had fixed his family computers as well as a computer for his business and that gave appellant for each job under \$500.00, which was consistent with the cost of the parts used. Mr. Farr stated that appellant always told him that the price to be paid was for the parts he purchased. Appellant never told him to make a check out to his wife because he was on disability.<sup>10</sup>

Appellant completed a Form OWCP-20, signed on September 7, 2012, in which he indicated that he had \$5,807.62 in monthly income, \$7,548.58 in monthly expenses and \$2,810.00 in assets. He submitted a number of billing statements and other documents which detailed his monthly expenses.

In a September 28, 2012 decision, an OWCP hearing representative affirmed the February 29, 2012 decision. He found that appellant forfeited his right to compensation for the periods April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007. He stated that the evidence, including the October 6, 2011 OIG memorandum, established that appellant wrongly failed to report employment and income on the CA-7 and EN1032 forms he completed for those periods.

In another September 28, 2012 decision, the hearing representative found that appellant received a \$104,333.03 overpayment of compensation for which he was at fault, thereby precluding waiver of recovery of the overpayment. He found that appellant knew or should have known that he had to report employment and earnings on the various forms he completed.

In February 19 and March 6, 2013 letters, counsel stated that he was attaching additional witness statements to establish that appellant did not work during the periods that he received total disability compensation.

In a supplemental statement signed on December 14, 2012, Mr. Kiriakidi advised that he became close friends with appellant in 2001 and that appellant often helped him as well as colleagues, friends and family members with computers. Appellant never asked for anything in return other than reimbursement for replacement parts. Mr. Kiriakidi stated that, before

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<sup>10</sup> Appellant submitted other signed statements of individuals with whom he or his wife had contact with respect to computer or building plan matters. Several of the individuals indicated that they were friends with appellant and his wife and noted that appellant helped them with their computers for free or for just the cost of replacing parts. Others indicated that they dealt with appellant's wife when having building plans draw up and that it was always represented to them that appellant's wife actually performed the work.

appellant's injury, one of his partners made him a dozen business cards in an effort to recruit him for a working relationship, but appellant was never interested in anything other than working for the employing establishment. Mr. Kiriakidi noted telling the interviewing agents that he did not know of appellant having or operating any type of business during their lengthy friendship. Appellant often helped him, if he could, as a friend. Mr. Kiriakidi stated that he never told agents that appellant received payment for any computer work relating to any of his partners, his businesses or himself. In a statement signed on December 14, 2012, Mr. Gartner noted that appellant never charged him for anything and helped him as a friend. He stated that he met appellant and appellant's wife 11 years prior through his business partner, Mr. Kiriakidi. Mr. Gartner received drawings from appellant on a number of occasions in connection with his partnership with Mr. Kiriakidi, but he had no knowledge of what appellant or appellant's wife did for Mr. Kiriakidi and any of his other partners. Mr. Gartner stated that he never told agents that appellant and Mr. Kiriakidi bartered services and that he had never known appellant "to be in business for himself or being involved in any kind of joint business venture." He never told the agents that he let a draftsman go due to the work performed by appellant, but rather he let a draftsman go because he was not competent.

In a statement signed on December 15, 2012, Mr. Kuebler stated that in April 2008 a friend indicated that appellant might be able to help him with a problem he had with his laptop. Appellant replaced a part on the laptop and told him that the part cost around \$200.00. Mr. Kuebler gave a check in this amount to appellant's wife and that appellant "asked for nothing else."

In a statement signed on December 14, 2012, Mr. Dietz noted that he first met appellant's wife around January 2005 in connection with the approval of building plans. He met with appellant's wife numerous times to discuss and approve drawing plans and he felt that she was knowledgeable and did well with the plans. Mr. Dietz stated that he told the special agents that he had never known appellant to have any type of business. He felt intimidated by the agents because they often pressed him to answer questions for which he had no answer. In a statement signed on December 18, 2012, Mr. Damm stated that he began working for Mr. Kiriakidi in 1999 and met appellant and his wife in 2001 when they were looking to purchase a home. He became friends with appellant and his wife and frequently socialized with them, as did Mr. Kiriakidi. Mr. Damm indicated that he was aware that appellant's wife did some work for Mr. Kiriakidi and some of his partners and that he communicated with appellant's wife through Mr. Kiriakidi. He would see appellant's wife in his office and received e-mails through her e-mail address. Dr. Damm stated that he never told the special agents that he communicated with appellant about constructions plans or that appellant worked for Mr. Kiriakidi or anyone else. He had never

known appellant to have a computer business and did not believe that appellant “was involved with what [appellant’s wife] was doing.”<sup>11</sup>

In a May 23, 2013 decision, OWCP denied modification of its September 28, 2012 forfeiture decision. It found that the evidence of record, including the October 6, 2011 OIG memorandum, established that appellant wrongly failed to report employment and income on the CA-7 forms and EN1032 forms he completed for the periods April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007.

### **LEGAL PRECEDENT**

Section 8106(b) of FECA<sup>12</sup> 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 the times the Secretary specifies.... 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>13</sup>

An employee can only be subjected to the forfeiture provision of 5 U.S.C. § 8106(b) if he “knowingly” omitted or understated earnings. It is not enough to merely establish that there were unreported earnings. OWCP’s procedure manual recognizes that forfeiture is a penalty,<sup>14</sup>

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<sup>11</sup> Appellant submitted more than a dozen additional signed statements of individuals with whom he or his wife had contact with respect to computer or building plan matters. Most of the individuals stated that they were friends with appellant and indicated that appellant helped them with their computers for no charge or for just the cost of replacing parts. Several people stated that appellant’s wife drew up building plans for them and that they had no knowledge that appellant operated any kind of business. Appellant also submitted a document entitled “general declaration” which was signed by 130 individuals in early 2013. The individuals listed the number of years they knew appellant and attested to the statement that they had “never known [appellant] to have any kind of business or ever being involved in one.”

<sup>12</sup> 5 U.S.C. § 8106(b).

<sup>13</sup> While section 8106(b)(2) refers only to partially disabled employees, the Board has held that the test for determining partial disability is whether, for the period under consideration, the employee was in fact either totally disabled or merely partially disabled, and not whether he received compensation for that period for total or partial loss of wage-earning capacity. *Ronald H. Ripple*, 24 ECAB 254, 260 (1973). The Board explained that a totally disabled employee normally would not have any employment earnings and therefore a statutory provision about such earnings would be meaningless. *Id.* at 260.

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.8 (May 2012).

and, as a penalty provision, it must be narrowly construed.<sup>15</sup> In OWCP's regulations, "knowingly" is defined as: "with knowledge, consciously, willfully or intentionally."<sup>16</sup> To meet this burden, OWCP is required to examine closely appellant's activities and statements. OWCP may meet this burden without an admission by an employee if the circumstances of the case establish that he failed to reveal fully and truthfully the full extent of his employment activities and earnings.<sup>17</sup>

Section 10.5(g) of OWCP's regulations define earnings from employment or self-employment as follows:

"(1) Gross earnings or wages before any deduction 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>18</sup>

The Board has held that OWCP may not base its application of the forfeiture provision strictly on conclusions drawn in an investigation; rather, the evidence of record must establish that the claimant has had unreported earnings from employment which were knowingly not reported.<sup>19</sup> In FECA Bulletin No. 83-7, OWCP noted that an investigative report showing that a claimant has had unreported earnings from employment must be used in conjunction with other evidence of record in order to properly find a forfeiture of compensation.<sup>20</sup> The Board cited this bulletin in *Claudia J. Thibault*,<sup>21</sup> in finding that the evidence of record was insufficient to establish that the employee had earnings within the meaning of FECA. In declaring a forfeiture of compensation, the only document that OWCP presented in support of its position was a memorandum in which a special agent from the employing establishment's OIG memorialized a telephone interview with a witness who commented on the employee's activities. The Board noted that the memorandum was written by the special agent rather than the person interviewed and found that the evidence was not sufficient to outweigh the claimant's testimony that she did not have earnings.

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<sup>15</sup> See *Christine P. Burgess*, 43 ECAB 449, 458 (1992).

<sup>16</sup> 20 C.F.R. § 10.5(n); see *Anthony A. Nobile*, 44 ECAB 268, 271-73 (1992).

<sup>17</sup> *Terry A. Geer*, 51 ECAB 168 (1999).

<sup>18</sup> 20 C.F.R. § 10.5(g); see *Monroe E. Hartzog*, 40 ECAB 322, 329 (1988).

<sup>19</sup> *B.Y.*, Docket No. 11-1798 (issued July 24, 2012); *Louis P. McKenna, Jr.*, 46 ECAB 328 (1994).

<sup>20</sup> FECA Bulletin No. 83-7 (issued March 31, 1984).

<sup>21</sup> 40 ECAB 836 (1989).

In the case of *R. W.*,<sup>22</sup> the Board found that OWCP's forfeiture determination was based on memorandum in which a special agent from the employer's OIG provided summaries of interviews conducted with appellant and several other witnesses. The memorandum, written by the special agent, did not delineate the questions asked of the witnesses or contain the actual answers provided by the witnesses. There was nothing signed by the witnesses attesting to the accuracy of the information contained in the memorandum. The Board found that the evidence was not sufficient to outweigh the employee's testimony that the only actions he took in connection with his companies were in his role as a passive investor.

### ANALYSIS

OWCP determined that appellant forfeited his right to compensation from April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007 because he knowingly failed to report earnings and employment activities related to his work in the construction planning and computer fields on several CA-7 forms and EN1032 forms. The amount of OWCP compensation found to be forfeited was \$104,333.03 and OWCP determined that this resulted in a \$104,333.03 overpayment of compensation for which appellant was at fault in creating, thereby precluding waiver of recovery of the overpayment.

Before OWCP and on appeal, counsel argued that OWCP did not support its forfeiture determination because it did not present sufficient evidence to establish appellant's failure to report earnings and employment activities. He asserted that the investigative reports of record only contained unsigned summaries of witness statements and had misrepresented the statements made by the interviewees. Counsel argued that appellant did not perform any work within the meaning of FECA and that later affidavits of various individuals clarified the earlier statements they had made to investigating agents.

The Board has held that OWCP may not base its application of the forfeiture provision strictly on conclusions drawn in an investigation, but rather the evidence of record must establish that the claimant has had unreported earnings from employment which were knowingly not reported.<sup>23</sup> The Board finds that OWCP did not present sufficient evidence to establish that appellant failed to report earnings or employment activities on the CA-7 forms and EN1032 forms he completed such that he should be subjected to the forfeiture provisions of FECA.

In finding that appellant forfeited compensation, OWCP heavily relied on an October 6, 2011 memorandum produced by Mr. Parisi, a special agent the employing establishment's OIG, which contained summaries of interviews obtained by investigating agents. The summaries of some of these interviews suggest some business activity performed by appellant, although the dates of these alleged activities are not specifically identified. For example, Mr. Kiriakidi, the owner of Prime Building Group, indicated that he had computerized assisted design drawings of building construction plans made for him on unspecified dates and that appellant was the main or only point of contact for the provision of these drawings. Mr. Kiriakidi stated that invoices for the drawings were made out to appellant's wife. He indicated that he did not know for sure

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<sup>22</sup> Docket No. 09-1607 (issued July 26, 2010).

<sup>23</sup> See *supra* note 19.

whether the drawings were prepared by appellant or his wife, but he suspected that they were prepared by appellant.<sup>24</sup>

The Board finds that OWCP did not present sufficient evidence to support its determination that appellant failed to report earnings or employment activities during the period April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007. In the October 6, 2011 memorandum memorializing the interviews conducted mostly by OIG, Mr. Parisi merely provided summaries of the interviews that special agents held with various individuals who had contact with appellant. The record does not contain any transcript detailing the questions asked of the various interviewees or the actual responses made by the interviewees. There are no individual statements signed by any of the parties questioned. The facts and the circumstances in the present case are similar to those in *Claudia J. Thibault*<sup>25</sup> and *R.W.*<sup>26</sup> Given the fact that, in finding periods of forfeiture, great emphasis was placed on interview summaries contained in an investigative memorandum without the benefit of detailed documentation confirming the accuracy of the interview summaries contained therein.

In addition, a number of these individuals interviewed by investigating agents produced signed statements in which they disputed the characterization of their statements as reported in the October 6, 2011 memorandum and supporting documents. For example, Mr. Kiriakidi produced statements signed on August 20 and December 14, 2012 in which he noted that he did not make some of the statements attributed to him by investigating agents. He indicated that he did not know of appellant having or operating any type of business during their lengthy friendship, that appellant helped him with various matters as a friend without charge and that he had no reason to believe that appellant's wife did not perform all of the building drawing work for him. In addition, both Mr. Farr and Mr. Lewis submitted signed statements in which they denied telling investigators that appellant asked them to make checks for services payable to appellant's wife because appellant was on disability and could not show any income. Numerous other individuals submitted signed statements in which they clarified statements they had previously made to investigating agents. These individuals indicated that they had no reason to believe that appellant's wife did not perform the building drawing work, that appellant did computer work for free or for the cost of parts he purchased and that they had no knowledge that appellant had a business.<sup>27</sup>

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<sup>24</sup> In addition, summaries of interviews provided by Mr. Parisi indicated that Mr. Farr owner of Jacobs Ladder Painting, Inc., stated that appellant provided computer repair services at his own house and that appellant asked him to make the check for such services payable to his wife because appellant was on disability and could not show any income. In another summarized interview, Mr. Lewis, owner of Lucas Construction, indicated that appellant asked him to make check payments for drawings payable his wife because appellant was on disability and could not show any income.

<sup>25</sup> See *supra* note 21.

<sup>26</sup> See *supra* note 22.

<sup>27</sup> For example, Mr. Dietz, an associate of Mr. Kiriakidi, also provided a signed statement indicating that he told the investigating agents that he had never known appellant to have any type of business. He stated that he felt intimidated by the agents because they often pressed him to answer questions for which he had no answer.

Other evidence of record does not clearly show that appellant had employment or earnings during the periods of forfeiture of compensation. While the record contains a number of the checks that are made out to appellant, in most cases there is no indication in the record for what purpose the checks were written. In other cases, the checks were made out to appellant on dates before the first date of declared forfeiture, *i.e.*, April 19, 2004. With respect to other checks, the interview summaries which accompany the checks indicate that the checks were intended to reimburse appellant for computer parts he purchased. In the October 6, 2011 investigative memorandum, it was indicated that, between May 3, 2004 and May 2, 2008, appellant and his wife received \$78,219.15 from their work activities and that this figure was derived from tax forms covering this period which were jointly filed by appellant and his wife. However, these tax forms are not in the record and it remains unclear how they would show that appellant had his own income from employment during the forfeiture periods.<sup>28</sup>

There is no evidence of record showing that appellant had any notable involvement in his wife's work. In a September 6, 2012 statement, appellant's wife stated that at some point no later than 2004 she began working with builders to assist them in modifying architectural plans for single family homes. She stated that she worked on her own with these builders and that appellant had no active role in her business. She advised that appellant had only a minor, incidental involvement in her work in that, because he socialized with many of the builders for which she performed work, he would at times pick up and drop off plans, drop off invoices and pick up checks. The Board notes that this limited involvement would not constitute appellant's participation in his wife's work. This activity by appellant appears to have been sporadic in nature. It is not the type of activity which would have required the hiring of an individual to perform it such that appellant would have been required to report this as business activity.<sup>29</sup>

Because OWCP did not show that appellant had employment or earnings that had to be reported on the CA-7 and EN1032 forms he completed covering the periods April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007, it did not meet its burden of proof to establish that he forfeited his right to compensation for these periods.

### CONCLUSION

The Board finds that OWCP did not meet its burden of proof to find that appellant forfeited his right to compensation from April 19 to June 26, 2004 and September 14, 2005 to December 23, 2007.

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<sup>28</sup> The record contains some building drawings dated between January and March 2004 which appear to bear appellant's initials, but these drawings were produced before the first date of declared forfeiture, *i.e.*, April 19, 2004.

<sup>29</sup> *But see J.S.*, 59 ECAB 2007 (2007) (where the claimant was required to report his unreimbursed activities -- including providing estimates, contracting for jobs, hiring employees, visiting job sites and handling all financial records -- because they were extensive enough to require the hiring of an employee to perform them).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 26, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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