



performed any volunteer work for which any form of monetary or in-kind compensation was received.

In a memorandum of digital versatile disc (DVD) review dated February 25, 2014, OWCP indicated that it had received three DVDs as well as an investigative report from the employing establishment's criminal investigation service. These records included two DVDs of a video interview with appellant by two investigators which lasted for almost two hours. There was also a DVD of 986 records from appellant's OWCP file.<sup>2</sup>

On April 10, 2014 OWCP made a preliminary determination that appellant had received an overpayment of compensation in the amount of \$64,519.57 for the period February 10, 2012 through August 21, 2013 as he had forfeited his right to compensation benefits for this period. Counsel requested a prerecoupment hearing before OWCP's Branch of Hearings and Review and a copy of all the investigative reports.

By decision dated January 28, 2015, OWCP hearing representative affirmed the findings of forfeiture and overpayment in the amount of \$64,519.57 for the period February 10, 2012 through September 10, 2013 as appellant knowingly failed to report employment earnings and activities on his EN1032 forms. She stated that she had reviewed the November 15, 2013 DVD interview of appellant and found that during this interview appellant admitted to volunteering during the period covered by his EN1032 forms.

The Board has duly considered the matter and finds that the case is not in posture for decision. Upon review of the case record submitted by OWCP, the Board finds that the record is incomplete because the DVDs containing appellant's interview with investigators are not in the record. OWCP hearing representative relied on these DVDs in reaching the decision that appellant had an overpayment of compensation because he had forfeited his right to compensation. The Board finds that the case is not in posture for a decision as the record before the Board is incomplete and would not permit an informed adjudication. The case must be remanded to OWCP to furnish the DVD's containing appellant's interview and for further reconstruction and assemblage deemed necessary, to be followed by an appropriate *de novo* decision.

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<sup>2</sup> By decision dated March 13, 2014, OWCP found that appellant had forfeited his compensation benefits for the period February 10, 2012 through September 21, 2013 on the basis that he "knowingly" failed to report employment or earnings from Caring Place Adult Family Home LLC (Caring Place). It stated that this decision was based on business documents and paperwork for Caring Place which listed appellant as a certified caregiver and staff member. OWCP further stated that appellant stated on camera during an interview of November 15, 2013 that he was the owner of the residential property for Caring Place and the he performed tasks including cleaning, preparing meals, and repairs for six hours a day seven days a week. In a separate letter dated April 10, 2014, it stated that the decision dated March 10, 2014 was issued prematurely and was set aside.

**IT IS HEREBY ORDERED THAT** the January 28, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: December 29, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board