

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

G.R., Appellant

and

**DEPARTMENT OF THE NAVY, PUGET
SOUND NAVAL SHIPYARD, Bremerton, WA,
Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-1047
Issued: December 29, 2015**

Appearances:
Howard L. Graham, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 10, 2015 appellant, through his representative, filed a timely appeal of a January 28, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The claim was docketed as No. 15-1047.

On November 8, 2011 appellant, then a 53-year-old welder, filed an occupational disease claim (Form CA-2) alleging that he developed left shoulder tendinopathy, impingement syndrome, and partial rotator cuff tear. OWCP accepted his claim for left shoulder rotator cuff tear on January 6, 2012. Appellant underwent left shoulder arthroscopic repair on March 7, 2012. OWCP entered appellant on the periodic rolls on April 10, 2012.

On October 16, 2012 and September 10, 2013 appellant completed EN1032 forms and indicated that he had not worked within the past 15 months at the employing establishment. He further indicated that he had not been self-employed or involved in any business enterprise during the previous 15-month period covered by the forms. Appellant indicated that he had not

¹ 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. §§ 510.2(c) and 501.3.

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.²

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 prerecoumpment 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.

² 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