

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

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C.D., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Atlanta, GA, Employer )

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**Docket No. 14-1165  
Issued: July 8, 2015**

*Appearances:*  
*Appellant, pro se*  
*Ashkea Herron McAllister, for the Director*

Oral Argument January 20, 2015

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 23, 2014 appellant filed a timely appeal from an October 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly found that appellant forfeited her right to compensation from February 4, 2006 to May 14, 2012; (2) whether appellant received a \$292,280.66 overpayment of compensation; and (3) whether she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

In April 1997, OWCP accepted that appellant, then a 37-year-old supervisor of customer service, sustained an adjustment disorder due to the performance of her work duties and other conditions at work. Appellant stopped work and began to receive compensation on the periodic rolls beginning in June 2002.

Between 2007 and 2013, appellant completed EN1032 forms which contained language advising her what types of employment activities, earnings, and volunteer activities that she was required to report for each 15-month period prior to the time she signed each form.

The EN1032 forms instructed appellant to report all employment for which she 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. Examples of services that she 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 others. If appellant performed any duties in a business enterprise for which she was not paid, she had to show what the rate of pay would have cost the employer or organization to hire someone to perform the work or duties she did, even if the work was for her or a family member or relative. The forms contained certification clauses which informed her of the consequences of not accurately reporting her employment activities, such as being subjected to criminal penalties and losing the right to receive workers' compensation.

On May 4, 2007, May 7, 2008, May 6, 2009, May 7, 2010, May 13, 2011, and May 14, 2012, appellant completed EN1032 forms indicating that she did not engage in any employment, self-employment, or volunteer work for the 15-month period prior to completing each form.<sup>2</sup> These EN1032 forms collectively covered the period February 4, 2006 to May 14, 2012.

In an EN1032 form completed on May 19, 2013 and covering the period February 19, 2012 to May 19, 2013, appellant reported that she had self-employment between February 2012

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<sup>2</sup> The EN1032 forms appellant completed between May 4, 2007 and May 7, 2010 asked her, "During the past 15 months, did you perform any volunteer work for which any form of monetary or in-kind compensation was received?" The EN1032 forms she completed on May 13, 2011 and May 14, 2012 contained a change in language and asked, "During the past 15 months, did you perform any volunteer work including volunteer work for which any form of monetary or in-kind compensation was received?"

and May 2013.<sup>3</sup> On the same form, she also reported that she performed volunteer work between January 2012 and May 2013 for six to eight hours per week.<sup>4</sup>

On January 23, 2013 OWCP received a January 16, 2013 investigative memorandum of the employing establishment's Office of Inspector General (OIG) in which it was concluded that appellant engaged in employment activity between 2007 and 2012 in connection with the organizations Word Church and Potter's House.

The OIG agent who completed the report indicated that appellant had been listed in Georgia corporation annual registration records for each of the years between 2007 and 2012 as Secretary of Word Church and Chief Executive Officer of Potter's House.<sup>5</sup> It was noted that evidence revealed that Word Church and Potter's House had been incorporated by appellant's husband in 1996 and 2003, respectively. Appellant's husband was listed on documents as Chief Executive Officer of Word Church and an Agent for Word Church. The OIG agent noted that appellant was listed on Word Church's website as "Executive Pastor" and that the website listed her as facilitating a meeting of the "God's Girls in the Earth/Women" life group on the second Sunday of the month.<sup>6</sup> The OIG report does not indicate, and the record does not otherwise establish, that appellant was ever paid a salary or received in-kind compensation for activities related to Word Church or Potter's house.

In a February 4, 2013 decision, OWCP determined that appellant forfeited her right to compensation from February 4, 2006 to May 14, 2012 because she failed to report employment activities on EN1032 forms covering this period. It indicated that she worked for Word Church and Potter's House and noted that the wording of the EN1032 forms advised her of the need to report such employment activities even if she was not paid for them. OWCP noted that appellant's activities were documented by evidence such as being listed on Word Church's website as "Executive Pastor," with her own church-account e-mail address, and as facilitating the "God's Girls in the Earth/Women" life group on the second Sunday of the month.

In a February 4, 2013 letter, OWCP advised appellant of its preliminary determination that she received a \$292,280.66 overpayment of compensation because she forfeited her right to any compensation from February 4, 2006 to May 14, 2012.<sup>7</sup> It also made a preliminary

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<sup>3</sup> Appellant indicated that she served as Secretary of the Board for Word Church International, Inc. (hereinafter Word Church) and Chairman of the Board for Potter's House Community Development Corp. (hereinafter Potter's House).

<sup>4</sup> Appellant indicated that she performed volunteer work in the form of office work (answering telephones, performing clerical work, purchasing supplies, and attending meetings) and outreach (feeding the homeless, driving a van, and mentoring). She received no monetary or in-kind compensation.

<sup>5</sup> The state corporation documents were attached to the report and are presently included in the case record.

<sup>6</sup> The record contains screenshots of these pages of Word Church's website. The screenshot regarding the "God's Girls in the Earth/Women" life group also indicated that all life groups were on hiatus until January 2012 due to Word Church hosting a function known as Financial Peace University. Another screenshot from 2011 lists appellant as "Pastor."

<sup>7</sup> The record contains payment records and worksheets showing that appellant received \$292,280.66 in compensation from February 4, 2006 to May 14, 2012.

determination that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP indicated that the EN1032 forms completed by appellant clearly advised her of the type of employment activities that needed to be reported. It requested that she complete and return a financial information questionnaire (Form OWCP-20).

Appellant requested a telephone hearing with an OWCP hearing representative. During the July 16, 2013 hearing, she testified that she had not worked as an employee for Word Church, which was headed by her husband, a pastor, and that she was given the title of Secretary for the church's board because she was advised that an organization is required to have a certain number of people on the board to incorporate. Appellant stated that she was ordained in 2005, but that she had not performed any pastoral duties. She indicated that she had "done maybe two or three Bible studies" over a period of three or four weeks. Appellant stated that she was not aware that her name was on the church website with respect to leading courses and indicated she only engaged in activities at Word Church as a member, including helping to feed the homeless and collecting and taking clothes to the homeless. She testified that if she happened to be at Word Church she would answer the telephone if nobody else was around and she asserted that Word Church always employed a secretary who received a salary and handled telephone and clerical matters. Appellant stated that she was not expected to be at Word Church or Potter's House at any given time, but noted that she did visit of her own volition in order to help out. She testified that she did not receive any money or compensation for any of her activities and that her physician recommended that she get involved with such activities. Appellant stated that her husband started Word Church in 1996 and that he was always the pastor. She noted that the activities she engaged in at Word Church or Potter's House were due to the fact that she was a member of the church and her husband was the pastor. Appellant indicated that she did not list her activities on the EN1032 forms as employment or volunteer work because she did not consider them to be such, but rather considered them to be the natural actions of a parishioner who was involved with her church. She indicated that she was listed as Chief Executive Officer of Potter's House, but noted that this was not a "working" position. Appellant explained that she was placed in the position because it was thought that it would be good for her to be in the position in the event anything happened to her husband. She stated that her husband was the executive director of Potter's House and performed its main functions. Potter's House was created to help carry out charity work for the homeless.

Appellant submitted a number of documents concerning her income and her monthly expenses, including tax forms, billing statements, and other financial documents. She provided a statement indicating that she was not the leader or facilitator for the "God's Girls in the Earth/Women" life group but rather she only provided a video for the group to watch on two occasions around 2010.

In an October 30, 2013 decision, OWCP affirmed its finding that appellant forfeited her right to compensation from February 4, 2006 to May 14, 2012 because she failed to report employment and earnings on EN1032 forms covering this period. It also found that she received a \$292,280.66 overpayment of compensation and that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

## LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA<sup>8</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>9</sup>

An employee can only be subjected to the forfeiture provision of 5 U.S.C. § 8106(b) if he or she “knowingly” omitted or understated earnings. It is not enough to merely establish that there were unreported earnings. OWCP procedure manual recognizes that forfeiture is a penalty,<sup>10</sup> and, as a penalty provision, it must be narrowly construed.<sup>11</sup> In OWCP’s regulations, “knowingly” is defined as: “with knowledge, consciously, willfully or intentionally.”<sup>12</sup> To meet this burden, OWCP is required to examine closely the employee’s activities and statements. It may meet this burden without an admission by an employee if the circumstances of the case establish that he or she failed to reveal fully and truthfully the full extent of his or her employment activities and earnings.<sup>13</sup>

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<sup>8</sup> 5 U.S.C. § 8106(b).

<sup>9</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 or she 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>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.8 (May 2012).

<sup>11</sup> *Christine P. Burgess*, 43 ECAB 449 (1992).

<sup>12</sup> 20 C.F.R. § 10.5(n); *see Anthony A. Nobile*, 44 ECAB 268 (1992).

<sup>13</sup> *Terry A. Geer*, 51 ECAB 168 (1999).

Section 10.5(g) of OWCP's regulations defines 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>14</sup>

### **ANALYSIS -- ISSUE 1**

OWCP found in its October 30, 2013 merit decision that appellant forfeited her right to compensation from February 4, 2006 to May 14, 2012. The Board will first consider whether appellant's completion of EN1032 forms on May 4, 2007, May 7, 2008, May 6, 2009, May 7, 2010, and May 13, 2011 justifies OWCP's determination regarding forfeiture of the right to compensation. The Board finds that OWCP improperly found that appellant “knowingly” omitted employment activities, earnings, or volunteer work on these forms within the meaning of section 8106(b)(2) of FECA. Although these forms notified appellant of her responsibility to provide information concerning her employment status, earnings, and volunteer work during the periods covered by the forms, the facts of the case show that OWCP did not meet its burden of proof to show that appellant knowingly made omissions on these forms.

Although the EN1032 forms signed by appellant between May 4, 2007 and May 13, 2011 used such terms as “business,” “enterprise,” and “service” to explain the obligation for reporting all forms of employment, self-employment, and earnings, the evidence of record does not show that she knowingly failed to report earnings or employment activities which fell within these categories on the forms she completed. Appellant asserted that she was not an employee of Word Church or Potter's House, but rather only attended services and engaged in other minor activities at Word Church and Potter's House in her role as a church member at Word Church. She indicated that her husband was the pastor of Word Church and carried out the major functions at Potter's House, an organization designed to help the homeless.

The Board notes that OWCP has placed undue emphasis on the fact that appellant was listed on corporation papers as Secretary of Word Church and Chief Executive Officer of Potter's House. Appellant has testified that she did not receive any compensation or perform any functions as Secretary of Word Church and Chief Executive Officer of Potter's House. She indicated that Word Church and Potter's House were nonprofit organizations, that there was no strict requirement that they be incorporated, and that they never engaged in for-profit activities. Appellant stated that she agreed to be listed as Secretary of Word Church because she was advised that an organization is required to have a certain number of people on the board in order to incorporate. She also noted that she was placed in the position of Chief Executive Officer of

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<sup>14</sup> 20 C.F.R. § 10.5(g); see *Monroe E. Hartzog*, 40 ECAB 329 (1988).

Potter's House because it was thought that it would be good for her to be in the position in the event anything happened to her husband.

The Board notes that the mere fact that appellant was listed on corporation papers as Secretary of Word Church and Chief Executive Officer of Potter's House does not establish factually whether she carried out any duties in connection with holding these positions. Appellant has testified that she performed no duties in connection with these positions. Similarly, the fact that she was listed as "Executive Pastor" or "Pastor" on Word Church's website does not provide any information about any specific activities she might have engaged in at any specific time.<sup>15</sup> The OIG agent for the employing establishment and OWCP asserted that appellant's activities in connection with Word Church were documented by a notation on the Word Church website which listed her as facilitating a meeting of the "God's Girls in the Earth/Women" life group on the second Sunday of the month. However, there is no indication precisely when this information appeared on the website, what was involved in facilitating the meeting, or whether and when appellant actually performed any functions with respect to this group.<sup>16</sup> Appellant provided a statement that she was not the leader or facilitator for the group and that she only provided a video for the group to watch on two occasions around 2010.

Appellant stated that a number of her actions could be best interpreted as the normal activities of a member of a church and the wife of a pastor, rather than as an individual who engaged in employment activities or volunteer work. In this context, she acknowledged that on unspecified dates and for unspecified amounts of time she engaged in activities such as helping to feed the homeless, gathering clothes for the homeless, and answering telephones at Word Church when no one else was around.<sup>17</sup> There is no documentary evidence of record regarding the amount of time appellant was engaged in such activities. Under these circumstances, the Board finds that OWCP has not met its burden of proof to submit documentary evidence establishing that such activities, particularly given their nature and undocumented duration, constitute employment activities that had to be reported.<sup>18</sup> Appellant also indicated that she did

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<sup>15</sup> The record remains unclear regarding precisely when and for what duration this characterization of appellant as Executive Pastor appeared on the website or who placed it on the website. Appellant stated that she was ordained in 2005, but that she had not performed any pastoral duties. She indicated that she did lead two or three Bible study sessions over a period of three or four weeks at an unspecified time, but it is unclear whether she led these sessions as a member of Word Church or in some other capacity. Appellant also asserted that there was no particular significance to the fact that she had her own church-account e-mail address as a number of other Word Church members had them as well.

<sup>16</sup> Moreover, the document indicated that all life groups were on hiatus until January 2012 due to Word Church hosting a function known as Financial Peace University.

<sup>17</sup> Appellant noted that Word Church had hired a secretary who was paid a salary and carried out telephone and clerical functions. She also stated that at times she has helped clean the church and decorate it for special functions held there.

<sup>18</sup> The Board notes that even if appellant's unreimbursed activities in this regard could be considered employment activities, the fact that there is insufficient documentary evidence of record to establish the extent to which they were carried out prevents a determination of whether such activities would have required the hiring of an individual to perform them such that appellant would have been required to report them as business activities. 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).

not list these actions on the EN1032 forms as volunteer work because she did not consider them to be such, but rather considered them to be the natural actions of a parishioner who was involved with her church.<sup>19</sup> The Board notes, that regardless of how her activities are characterized, OWCP has not met its burden of proof to submit documentary evidence delineating their nature, timing, and duration such that it is established that appellant knowingly made material omissions on the EN1032 forms she completed between May 4, 2007 and May 13, 2011.<sup>20</sup>

The Board generally notes the sparseness of the supporting evidence collected by the OIG for the employing establishment regarding appellant's activities relative to Word Church and Potter's House. For example, the OIG agent did not obtain a single witness statement in an attempt to elucidate the nature and extent of such alleged activities. 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 employment activities, earnings from employment, or volunteer work which were knowingly not reported.<sup>21</sup> The Board notes that the conclusions contained in the report of the OIG for the employing establishment have not been adequately documented and therefore not proven.

For these reasons, the Board finds that OWCP did not present sufficient evidence to establish that appellant "knowingly" failed to report earnings, employment activities, or volunteer activities under section 8106(b)(2) of FECA on the EN1032 forms she completed on May 4, 2007, May 7, 2008, May 6, 2009, May 7, 2010, and May 13, 2011 such that she should be subjected to the forfeiture provisions of FECA for nondisclosure on these forms.<sup>22</sup>

However, the Board also finds that appellant did "knowingly" omit employment activities and/or volunteer work under section 8106(b)(2) of FECA on the EN1032 form she completed on May 14, 2012, a form which covered the period February 14, 2011 to May 14, 2012. On the May 19, 2013 form, appellant reported that she had self-employment between February 2012 and May 2013<sup>23</sup> and performed volunteer work between January 2012 and May 2013 for six to eight

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<sup>19</sup> Moreover, the EN1032 forms that appellant completed beginning in 2007 initially provided that volunteer work should only be reported if monetary or in-kind compensation was received and she did not, in fact, receive any compensation for such activities. *See supra* note 2 regarding the language of the EN1032 forms with respect to volunteer work.

<sup>20</sup> *See supra* notes 10 through 13 regarding OWCP's burden of proof to establish forfeiture of the right to compensation for any given period. *See also James M. Steck*, 49 ECAB 134 (1997) (where knowing omission on an OWCP form was found after extensive documentation was entered into the record regarding the employee's specific duties as a youth minister at a church).

<sup>21</sup> *See D.O.*, Docket No. 13-1809 (issued September 11, 2014); *R.W.*, Docket No. 09-1607 (issued July 26, 2010).

<sup>22</sup> In a January 13, 2015 brief, the Director argued that OWCP's findings were proper as appellant failed to report employment activity or volunteer work on various EN1032 forms. The Board notes that the Director did not adequately explain how such employment activity or voluntary work was documented by the evidence of record.

<sup>23</sup> Appellant stated that she served as Secretary of the Board for Word Church and Chairman of the Board for Potter's House.

hours per week.<sup>24</sup> This acknowledged self-employment and volunteer work was performed during the period covered by the EN1032 form she completed on May 14, 2012, *i.e.*, February 14, 2011 to May 14, 2012. However, appellant failed to report this self-employment and volunteer work on the EN1032 form she completed on May 14, 2012. Therefore, forfeiture of the right to compensation has been established for the entire period February 14, 2011 to May 14, 2012.

OWCP found that appellant forfeited her right to compensation from February 4, 2006 to May 14, 2012. For the reasons explained above, it has only met its burden to establish forfeiture of the right to compensation for the period February 14, 2011 to May 14, 2012. Therefore, OWCP has not established that appellant “knowingly” omitted employment activities, earnings, or volunteer work under section 8106(b)(2) for the remaining portion of the original period for which it found forfeiture, *i.e.*, February 4, 2006 to February 13, 2011.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.<sup>25</sup> Section 8129(a) of FECA provides, in pertinent part, “When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”<sup>26</sup>

### **ANALYSIS -- ISSUE 2**

OWCP based its finding of a \$292,280.66 overpayment of compensation on its determination that appellant forfeited her right to compensation from February 4, 2006 to May 14, 2012. For the reasons described above, it did not meet its burden of proof to establish that appellant forfeited her right to compensation from February 4, 2006 to February 13, 2011, but the evidence does support a finding of forfeiture of compensation for the period February 14, 2011 to May 14, 2012. Due to the fact that appellant would not be entitled to compensation for the period February 14, 2011 to May 14, 2012, the amount of compensation she actually received during this period would serve as the basis for an overpayment of compensation. Thus, OWCP has established an overpayment for the period February 14, 2011 to May 14, 2012 and the case shall be remanded to OWCP for recalculation of the amount of the established overpayment.

Given the Board’s finding regarding the fact and amount of the overpayment, it is premature to consider the matters of fault and waiver of recovery of the overpayment. After carrying out the necessary development in accordance with this decision, OWCP shall issue an appropriate decision regarding these overpayment matters.

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<sup>24</sup> Appellant indicated that she performed volunteer work in the form of office work (answering telephones, performing clerical work, purchasing supplies, and attending meetings) and outreach (feeding the homeless, driving a van, and mentoring). She received no monetary or in-kind compensation.

<sup>25</sup> 5 U.S.C. § 8102(a).

<sup>26</sup> *Id.* at § 8129(a).

### **CONCLUSION**

The Board finds that OWCP improperly found that appellant forfeited her right to compensation for the period February 4, 2006 to February 13, 2011, but properly found that she forfeited her right to compensation for the period February 14, 2011 to May 14, 2012. The Board further finds that it improperly determined that an overpayment of compensation was created by appellant's receipt of compensation for the period February 4, 2006 to February 13, 2011, but that an overpayment of compensation has been established by her forfeiture of compensation for the period February 14, 2011 to May 14, 2012. The case is remanded to OWCP for recalculation of the overpayment and the issuance of an appropriate overpayment decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 8, 2015  
Washington, DC

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

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

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