

On October 1, 2015 OWCP issued an amended forfeiture decision. By decision dated January 4, 2016, OWCP finalized the preliminary determination of overpayment in the amount of \$107,680.56 for the period June 27, 2008 to July 1, 2011 and found that appellant was at fault in the creation of the overpayment.

The Board has found that it must first determine whether an overpayment occurred by examining the underlying decision of OWCP on which the overpayment was based.¹ Accordingly, in order to determine whether an overpayment of compensation occurred in this case, the Board must initially determine whether OWCP properly determined that appellant forfeited his right to monetary compensation from June 27, 2008 to July 1, 2011 under 5 U.S.C. § 8106(b) because he knowingly failed to report his employment activities or earnings.²

The Board notes that following OWCP's March 5, 2015 forfeiture decision, appellant requested a hearing. This request was received by OWCP on March 25, 2015. A review of the record reveals, however, that OWCP failed to grant or address appellant's timely request for a hearing of OWCP's March 5, 2015 forfeiture decision. OWCP issued the September 30, 2015 preliminary notice of overpayment without consideration of appellant's request for hearing.

OWCP Procedures provide that a claimant is entitled to a hearing before an OWCP hearing representative after a final decision.³ The Board has held that a claimant who submits a written request for either an oral hearing or a review of the written record within 30 days of the date of the OWCP's decision is entitled to a hearing or review as a matter of right.⁴ The Board finds that OWCP failed to grant appellant's March 25, 2015 hearing request, which was received by OWCP within 30 days of the March 5, 2015 forfeiture decision. The case will, therefore, be remanded for OWCP to properly address and grant appellant's timely March 25, 2015 hearing request. After such further development as OWCP deems necessary, it should issue an appropriate decision.

¹ *Russell E. Wageneck*, 46 ECAB 653 (1995); *Samuel J. Russo*, 28 ECAB 43 (1976).

² *See Ronald E. Ogden*, 56 ECAB 278 (2005).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.2.a (October 2011).

⁴ *N.M.*, Docket No. 12-1257 (issued November 28, 2012); *B.T.*, Docket No. 10-2349 (issued June 15, 2011).

IT IS HEREBY ORDERED THAT the January 4, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order.

Issued: July 17, 2017
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