

By decision dated February 28, 2018, OWCP found that appellant had forfeited compensation for the periods from February 21 through April 10, 2010 and May 15, 2010 through November 4, 2016 as she knowingly failed to report self-employment activities and earnings on EN1032 forms, which indicated that for the past 15 months she had not worked, was not self-employed, and was not involved in a business enterprise, and on claims for compensation (Form CA-7) for leave without pay. It noted that an investigation, initiated by the employing establishment's Office of the Inspector General (OIG) in 2016 regarding appellant's employment activities, revealed that she was self-employed at Pierce's Precious Puppies, a dog breeding service operated in her residence. On March 16, 2018 appellant, through counsel, requested a telephonic hearing with a representative of the OWCP Branch of Hearings and Review.

OWCP made a preliminary determination finding that an overpayment of compensation in the amount of \$103,563.25 was created due to the forfeiture of compensation for the periods from February 21 through April 10, 2010 and May 15, 2010 through November 4, 2016. It further found that appellant was at fault in the creation of the overpayment because she knowingly failed to report self-employment activities and earnings.

By decision dated September 4, 2018, an OWCP hearing representative affirmed the February 28, 2018 forfeiture decision and finalized the preliminary determination regarding the fact and amount of overpayment and found that appellant was with fault in the creation of the overpayment in the amount of \$103,563.25. In finding that a forfeiture and an overpayment of compensation had occurred, the amount of the overpayment, and that appellant was at fault in creating the overpayment, the hearing representative not only relied on the EN1032 and CA-7 forms signed by appellant, but also relied on the OIG investigative report. It was noted that, "The OIG provided evidence dating back to 2008 documenting appellant's activities and obtained statements from the customers of the business. The decision stated that, "The OIG report is incorporated herein by reference." The hearing representative directed repayment of the overpayment by deducting \$400.00 every 28 days from appellant's continuing compensation payments. The hearing representative also directed OWCP to combine her claims in OWCP File Nos. xxxxxxxx047 and xxxxxxx660.⁴

The Board finds that while a January 27, 2011 Form EN1049, which informed appellant of her rights and responsibilities as a FECA benefits recipient, and appellant's EN1032 and CA-7 forms were listed as exhibits in the OIG investigative report and contained in the record, not all of the items listed as exhibits were transmitted to the Board. The Board, therefore, cannot verify the factual basis for the findings as to the nature and extent of business activities as found by the hearing representative in the September 4, 2018 decision.

OWCP's procedures provide that all evidence that was before OWCP at the time it rendered its decision should be in the case record before the Board.⁵ To consider appellant's appeal

⁴ Following issuance of the hearing representative's September 4, 2018 decision, OWCP administratively combined OWCP File Nos. xxxxxxx047 and xxxxxxx660, with OWCP File No. xxxxxxx660 serving as the master file.

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(a) (June 2011).

in piecemeal fashion, as presented to the Board, could result in further inconsistent results.⁶ It is the Board's policy to avoid such an outcome.⁷

Accordingly, the case will be remanded to OWCP for reconstruction of the record, including obtaining the exhibits listed in the OIG investigative report. Following reconstruction of the record, OWCP shall issue a *de novo* decision on the merits of the claim.⁸ Accordingly,

IT IS HEREBY ORDERED THAT the September 4, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 18, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁶ See *C.J., Order Remanding Case*, Docket No. 18-1202 (issued March 8, 2019); *A.B.*, Docket No. 17-1480 (issued June 8, 2018).

⁷ *Id.*; see also *William T. McCracken*, 33 ECAB 1197 (1982).

⁸ See *C.J.*, *supra* note 5; *G.R., Order Remanding Case*, Docket No. 15-1047 (issued December 29, 2015).