

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUES

The issues are: (1) whether OWCP properly determined that appellant forfeited his right to compensation from May 11, 2009 through July 15, 2013, pursuant to 5 U.S.C. § 8106(b), because he knowingly failed to report his employment activities and earnings; (2) whether OWCP properly found that appellant received an overpayment of compensation in the amount of \$351,057.54 for the period May 11, 2009 through July 15, 2013 as he forfeited his entitlement to compensation for this period; (3) whether OWCP properly found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the overpayment by deducting \$5,000.00 from appellant's compensation payments every 28 days.

FACTUAL HISTORY

On January 26, 1999 appellant, then a 37-year-old special agent/criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he sustained a stress disorder due to carrying out his law enforcement work duties, which included witnessing the aftermath of an October 4, 1994 shoot-out in which three suspects were injured. He last worked for the employing establishment on January 26, 1999. OWCP accepted appellant's claim for post-traumatic stress disorder and depression, and paid him wage-loss compensation for disability from work on the periodic rolls commencing June 16, 2002.

In September 2007 OWCP referred appellant for participation in an OWCP-sponsored vocational rehabilitation program designed to return him to full-time work. In a January 17, 2008 report, appellant's vocational rehabilitation counselor indicated that appellant reported to her in December 2007 that he had graduated from Southern New England School of Law in 2004 and passed the bar examination in December 2005. She noted that appellant further reported that he had been self-employed as a defense attorney since June 2006. Appellant advised that the hours he worked each week varied according to his caseload and impending court cases, but that he did go into his law office every day.

Appellant completed EN-1032 forms at OWCP's request that contained language advising him what types of employment activities and earnings he was required to report for each 15-month period prior to the time he signed each form. The EN-1032 forms instructed appellant to report all employment for which he 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

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the January 7, 2019 decisions, appellant submitted additional evidence to OWCP and on appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(including a store or restaurant), and providing services in exchange for money, goods, or other services. Such activities had to be reported even if they were part time or intermittent.

The EN-1032 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 he was not paid, he had to show as the rate of pay what it would have cost the employer or organization to hire someone to perform the work or duties he did, even if the work was for him or a family member or relative. The forms contained certification clauses that informed appellant of the consequences of not accurately reporting his earnings and employment activities, such as being subjected to criminal prosecution. The EN-1032 forms appellant signed on July 31, 2011, July 31, 2012, and July 15, 2013 contained certification clauses, which also advised him that fraudulently concealing or failing to report income or other information in claiming FECA benefits in an EN-1032 form might result in forfeiture of compensation for the period covered by the form.

On August 1, 2009 appellant signed an EN-1032 form in which he responded, “No” to a question asking him whether he had worked for any employer during the 15 months prior to the date he signed the form. He responded “Yes” to a question to indicate that he had been self-employed or involved in a business enterprise in the past 15 months, noting that he provided legal services for the period June 6, 2006 to the present through his own law offices. Appellant listed his “rate of pay” as zero and his “actual earnings” as zero.

Appellant signed EN-1032 forms on July 31, 2011, July 31, 2012, and July 15, 2013 in which he reported that he had been self-employed or involved in a business enterprise in the past 15 months in that he had provided legal services for the period June 6, 2006 to the present through his own law offices. On the July 31, 2011 and July 31, 2012 EN-1032 forms, he listed his rate of pay as zero and did not answer the question requesting him to report his actual earnings. On the July 15, 2013 EN-1032 form appellant listed his rate of pay as zero and his actual earnings as zero.

In a December 29, 2016 report, appellant’s vocational rehabilitation counselor indicated that appellant was currently working as an attorney in Massachusetts. She noted that she had closed appellant’s vocational rehabilitation file as of December 2, 2016 due to his lack of cooperation.

In a January 10, 2017 memorandum, a special agent for the employing establishment’s Office of Inspector General (OIG) indicated that appellant worked on a full-time basis as an attorney representing a defendant in a criminal case before a federal court in Utah for the period September 17, 2012 through September 22, 2016. The agent reported that appellant was an attorney who practiced in Massachusetts and that the case required him to travel from his law offices in Massachusetts to Utah and Washington, DC.

In a May 27, 2017 statement, the Social Security Administration (SSA) advised that appellant had self-employment earnings of \$483.00 in 2010, \$14,498.00 in 2011, and \$14,086.00 in 2012.

By decision dated April 4, 2018, OWCP determined that appellant forfeited his right to compensation from May 11, 2009 through July 15, 2013, pursuant to 5 U.S.C. § 8106(b), because

he knowingly failed to report earnings on EN-1032 forms covering this period. It found that appellant was self-employed as an attorney in his own law practice during the relevant period and noted that the wording of the EN-1032 forms advised appellant of the need to report earnings from such employment.

In an April 4, 2018 letter, OWCP advised appellant of its preliminary overpayment determination that he received an overpayment of compensation in the amount of \$351,057.54 due to the fact that he forfeited his compensation for the period May 11, 2009 through July 15, 2013.⁵ It also made a preliminary determination that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. OWCP indicated that the EN-1032 forms completed by appellant clearly advised him of the type of earnings and employment activities that needed to be reported. It provided an overpayment action request form advising appellant regarding his hearing options, and requested that he complete and return a financial information questionnaire form (Form OWCP-20).

On April 27, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the forfeiture issue. On the same date, he also requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review regarding the overpayment issue.

On May 2, 2018 OWCP received an overpayment action request form in which appellant challenged the fact, amount, and fault determinations concerning the alleged overpayment. On May 2, 2018 it also received a Form OWCP-20, completed by appellant on April 16, 2018, in which he indicated that he had \$3,981.72 in monthly income, \$6,126.71 in monthly expenses, and \$2,603.75 in assets. Appellant submitted copies of bank statements, cashed checks, check card statements, profit/loss statements, and federal and state tax returns (including federal returns for the tax years 2009 through 2013). Many of the documents were identified as relating to expenses for the operation of appellant's law offices, including expenses for travel, meals, office supplies, and professional dues. The bank statements showed that appellant had multiple bank accounts dedicated to his law practice and that deposits and withdrawals were made on the accounts during each of the 15-month periods covered by the EN-1032 forms he signed on August 11, 2010, July 31, 2011, July 31, 2012, and July 15, 2013.

The federal tax documents appellant submitted included completed Schedule C forms (Profit or Loss From Business). With respect to the period at issue in the present case, he reported the following earnings from his legal practice on the Schedule C federal tax forms: gross income of \$86,366.00 and net loss of \$6,891.00 for 2009; gross income of \$95,965.00 and net profit of \$523.00 for 2010; gross income of \$158,885.00 and net profit of \$15,699.00 for 2011; gross income of \$185,243.00 and net profit of \$15,253.00 for 2012; and gross income of \$124,680.00 and net loss of \$16,075.00 for 2013.

On October 25, 2018 a hearing was held, which addressed the forfeiture issue and also served as a precoupment hearing regarding the overpayment issue. Appellant testified that he thought he did not have to report earnings on the EN-1032 forms because he had no profits from

⁵ The record contains payment records and worksheets showing that appellant received \$351,057.54 in compensation from May 11, 2009 through July 15, 2013.

his legal practice. He noted that he had a part-time employee working for him at his law offices for part of 2009. Appellant claimed that an overpayment did not occur, disagreed with the finding of fault, and maintained that he accurately reported his self-employment activities and earnings. A certified public accountant who appeared on appellant's behalf, testified regarding deposits and withdrawals that were made with respect to the bank account of appellant's law practice and argued that they showed that appellant's law practice operated at a loss during the period May 1, 2009 through July 15, 2013. Counsel claimed that the submitted tax returns did not list earnings that fully covered each of the 15-month periods covered by the EN-1032 forms completed on August 11, 2010, July 31, 2011, July 31, 2012, and July 15, 2013. He asserted that the OIG's January 10, 2017 memorandum should not be relied upon because it was based on unsupported conclusions made by an investigating agent. The hearing representative discussed the overpayment and appellant's financial situation, and provided appellant 30 days to submit additional financial information.

On November 14, 2018 OWCP received a Form OWCP-20, signed on October 31, 2018, in which appellant listed monthly income of \$5,060.21 (comprised entirely of the salary of appellant's wife), \$6,346.15 in monthly expenses, and \$2,927.00 in assets.

By decision dated January 7, 2019, OWCP's hearing representative affirmed the April 4, 2018 decision regarding forfeiture of compensation.

By separate decision also dated January 7, 2019, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$351,057.54 and that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. The hearing representative found that appellant had \$11,565.61 in monthly income (comprised of \$5,060.21 from the salary of appellant's wife and \$6,505.40 from appellant's FECA benefits), \$6,346.15 in monthly expenses, and \$2,927.00 in assets. The hearing representative then determined that the overpayment would be recovered by deducting \$5,000.00 from appellant's compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA provides that an employee who fails to make an affidavit or report when required or knowingly omits or understates any part of his or her earnings, forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.⁶

An employee, however, can only be subjected to the forfeiture provision of 5 U.S.C. § 8106(b) if he or she knowingly failed to report employment or earnings. It is not enough to merely establish that there were unreported earnings.⁷ OWCP's procedures recognize that

⁶ 5 U.S.C. § 8106(b).

⁷ *T.G.*, Docket No. 19-0051 (issued August 20, 2019); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

forfeiture is a penalty, and, as a penalty provision, it must be narrowly construed.⁸ The term knowingly is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.⁹

OWCP's regulations define earnings from employment or self-employment as gross earnings or wages before any deductions (including the value of subsistence, quarters, reimbursed expenses, and any other goods or services received in kind as remuneration); or a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration.¹⁰ 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.¹¹ The language on OWCP's EN-1032 forms is clear and unambiguous in requiring a claimant to report earnings for the previous 15 months from any employer, self-employment, or a business enterprise in which he or she worked. The forms further emphasize that severe penalties may be applied for failure to report all work activities thoroughly and completely.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant forfeited his right to compensation from May 11, 2009 through July 15, 2013, pursuant to 5 U.S.C. § 8106(b), because he knowingly failed to report his employment activities and earnings.

In the present case, the record establishes that appellant knowingly omitted earnings/employment activities on EN-1032 forms completed on August 11, 2010, July 31, 2011, July 31, 2012, and July 15, 2013. In these forms, OWCP notified appellant of his responsibility to complete the forms and provide relevant information concerning his employment status and earnings during each 15-month period covered by the forms. Appellant explicitly acknowledged on the forms that he worked as an attorney when he indicated that he had been self-employed in his own law practice since June 6, 2006. However, he failed to adequately report his earnings/employment activities when he indicated on the forms that he had actual earnings of zero, or neglected to answer the questions requesting him to report his actual earnings. Appellant also failed in his reporting duties when he indicated on the forms that he had a rate of pay of zero.

There is no question that appellant received earnings for his work as an attorney during the 15-month periods covered by each of the above-noted EN-1032 forms. Collectively, the EN-1032 forms covered the period of the forfeiture, *i.e.*, May 11, 2009 through July 15, 2013. Appellant acknowledged working as an attorney during the relevant period on the EN-1032 forms

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.5, 8 (May 2012). *See also T.P.*, Docket No. 17-0717 (issued April 11, 2018); *Christine P. Burgess*, 43 ECAB 449 (1992).

⁹ 20 C.F.R. § 10.5(n). *See also I.S.*, Docket No. 17-0897 (issued April 9, 2018); *Anthony A. Nobile*, 44 ECAB 268 (1992).

¹⁰ 20 C.F.R. § 10.5(g).

¹¹ *Id.*

¹² *B.K.*, Docket No. 17-0406 (issued December 12, 2017).

themselves, in statements to his vocational rehabilitation counselor, and in testimony during a hearing before a hearing representative. His receipt of earnings for his self-employment as an attorney is documented in tax returns and other documents. Before OWCP and on appeal, counsel has argued that appellant did not have earnings that needed to be reported because his law practice did not make a profit. The Board has long held that there is no provision for offset or payment based on the amount of income actually received and whether an employee makes a profit on his or her activities is irrelevant.¹³ In addition, as noted above, OWCP's regulations define earnings from employment or self-employment as, a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration.¹⁴ However, appellant did not report such earnings or cost of services rendered on the EN-1032 forms submitted to OWCP.

Counsel asserted that the OIG's January 10, 2017 memorandum should not be relied upon to find that appellant had earnings during the relevant period because it was based on unsupported conclusions made by an investigating agent. 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 earnings from employment, which were knowingly not reported.¹⁵ Here, the record establishes that appellant reported the following earnings from his legal practice on Schedule C federal tax forms: gross income of \$86,366.00 and net loss of \$6,891.00 for 2009; gross income of \$95,965.00 and net profit of \$523.00 for 2010; gross income of \$158,885.00 and net profit of \$15,699.00 for 2011; gross income of \$185,243.00 and net profit of \$15,253.00 for 2012; and gross income of \$124,680.00 and net loss of \$16,075.00 for 2013. Furthermore, in a May 27, 2017 statement, the SSA advised that appellant had self-employment earnings of \$483.00 in 2010, \$14,498.00 in 2011, and \$14,086.00 in 2012.

Counsel has argued that appellant did not work continuously on a full-time basis during the 15-month periods specified on the EN-1032 forms completed by appellant and, therefore, the forms should not be used to establish a failure to report earnings. However, this argument is without merit because the Board has held that when an EN-1032 form is improperly completed resulting in forfeiture, the period of the forfeiture is the entire 15-month period covered by the form in question even if the claimant had no earnings during a portion of the period.¹⁶ The above-discussed evidence of record establishes that appellant had earnings during each of the 15-month periods covered by the EN-1032 forms signed on August 11, 2010, July 31, 2011, July 31, 2012, and July 15, 2013.

The EN-1032 forms signed by appellant used such terms as "business," "enterprise," and "service" to explain the obligation for reporting all forms of employment, self-employment and

¹³ *F.H.*, Docket No. 07-1379 (issued November 24, 2008) (rejecting the claimant's argument that his earnings were substantially less when expenses were deducted from gross earnings).

¹⁴ *See supra* note 10.

¹⁵ *See M.G.*, Docket No. 20-0735 (issued October 23, 2020); *R.M.*, Docket No. 13-2169 (issued August 26, 2014); *Louis P. McKenna, Jr.*, 46 ECAB 328 (1994).

¹⁶ *See Julia M. Andrews*, Docket No. 04-1995 (issued February 1, 2005).

earnings.¹⁷ The language of the EN-1032 forms clearly advised appellant that the nature of his work as an attorney would require him to report earnings from his employment activities on the forms. Appellant's signing of strongly-worded certification clauses on the EN-1032 forms further shows that he was aware of materiality of his failure to report his earnings/employment. This is persuasive evidence that he knowingly understated his earnings and employment information.¹⁸

The Board, therefore, finds that appellant knowingly omitted his earnings under section 8106(b)(2) of FECA by failing to report his earnings and full employment activities as an attorney on the applicable EN-1032 forms covering the period May 11, 2009 through July 15, 2013. Accordingly, the Board finds that OWCP properly determined that appellant forfeited his right to compensation from May 11, 2009 through July 15, 2013.

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 or her duty.¹⁹ 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."²⁰

Section 10.529 of OWCP's implementing regulations provides as follows:

"(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

"(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. § 8129 and other relevant statutes."²¹

¹⁷ The EN-1032 forms instructed appellant to report all employment for which he 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.

¹⁸ See *I.S.*, *supra* note 9. See also *Terry/A. Geer*, 51 ECAB 168 (1999).

¹⁹ 5 U.S.C. § 8102(a).

²⁰ *Id.* at § 8129(a).

²¹ 20 C.F.R. § 10.529.

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$351,057.54 for the period May 11, 2009 through July 15, 2013 as he forfeited his entitlement to compensation for this period.

For the reasons explained above, appellant forfeited his compensation from May 11, 2009 through July 15, 2013. The evidence of record includes payment documents and worksheets, which show that he received \$351,057.54 in compensation during this period. Due to the forfeiture of compensation, appellant would not be entitled to this compensation and, therefore, the Board finds that he received a \$351,057.54 overpayment of compensation.²²

LEGAL PRECEDENT -- ISSUE 3

Section 8129(a) of FECA provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled.²³ The only exception to this requirement is a situation, which meets the tests set forth as follows in section 8129(b): “Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”²⁴ No waiver of payment is possible if the claimant is not “without fault” in helping to create the overpayment.²⁵

In determining whether an individual is not “without fault” or alternatively, “with fault,” section 10.433(a) of Title 20 of the Code of Federal Regulations provides in relevant part that an individual is with fault in the creation of an overpayment if he or she made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; failed to provide information which he or she knew or should have known to be material; or accepted a payment which he or she knew or should have known to be incorrect.²⁶

Section 10.433(c) of OWCP’s regulations provides that whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.²⁷

²² *See id.*

²³ 5 U.S.C. § 8129(a).

²⁴ *Id.* at § 8129(b).

²⁵ *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Robert W. O’Brien*, 36 ECAB 541, 547 (1985).

²⁶ 20 C.F.R. § 10.433(a).

²⁷ *Id.* at § 10.433(c).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

OWCP properly determined that appellant was at fault in the creation of the overpayment because he failed to provide information that he knew or should have known to be material on EN-1032 forms covering the period May 11, 2009 through July 15, 2013. As discussed above, the case record supports that appellant had earnings and employment activities for each 15-month period covered by the EN-1032 forms he signed on August 11, 2010, July 31, 2011, July 31, 2012, and July 15, 2013, but he failed to fully report the extent of these earnings/employment activities.

The language of the EN-1032 forms demonstrates that appellant knew or should have known that the nature of his work as an attorney would require him to report such employment activities on the forms.²⁸ Since appellant had unreported earnings/employment activities during these periods, he knowingly failed to furnish this material information to OWCP. Appellant signed a certification clause on the EN-1032 forms that advised him that he might be subject to penalties if he knowingly made a false statement or misrepresentation or concealed a fact to obtain compensation. By signing these forms, appellant is deemed to have acknowledged his duty to fill out the forms properly, including the duty to report any earnings, employment, self-employment, or involvement in a business enterprise. As appellant indicated that he had no earnings from employment during the covered periods, he failed to furnish information which he knew or should have known to be material to OWCP. As he is at fault in the creation of the overpayment, it is not subject to waiver of recovery.²⁹

LEGAL PRECEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.³⁰ Section 10.441 of Title 20 of the Code of Federal Regulations provides that, if an overpayment of compensation has been made to an individual entitled to future payments, proper adjustment shall be made by decreasing subsequent payments of compensation, "taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship."³¹ The Federal (FECA) Procedure Manual provides that, when an individual fails to provide the requested information on income, expenses and assets, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation

²⁸ See *J.A.*, Docket No. 14-1863 (issued July 7, 2015).

²⁹ *A.T.*, Docket No. 17-0953 (issued December 20, 2017); *Harold F. Franklin*, 57 ECAB 387 (2006).

³⁰ *M.P.*, Docket No. 18-0902 (issued October 16, 2018); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

³¹ 20 C.F.R. § 10.441; see also *P.J.*, Docket No. 18-0248 (issued August 14, 2018); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

amount until the balance of the overpayment is paid in full.³² The Federal (FECA) Procedure Manual further provides that, if a response is received, the financial information should be thoroughly examined and the claims examiner should set a reasonable rate of repayment.³³

ANALYSIS -- ISSUE 4

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$5,000.00 from appellant's compensation payments every 28 days.

As explained above, OWCP's procedures provide that, in instances where the claimant fails to provide the requested financial information, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.³⁴ In this case, however, not only did appellant respond to the preliminary overpayment determination by submitting a completed Form OWCP-20, reporting his income, assets, and expenses, but OWCP also required recovery at a rate higher than 25 percent. The record establishes that OWCP paid appellant \$6,505.40 in net compensation as of January 5, 2019. The Board notes that 25 percent of \$6,505.40 is \$1,626.35. The Board, therefore, finds that OWCP abused its discretion by deducting \$5,000.00 from appellant's continuing compensation payments, every 28 days.³⁵

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited his right to compensation from May 11, 2009 through July 15, 2013, pursuant to 5 U.S.C. § 8106(b), because he knowingly failed to report his employment activities and earnings and that he received an overpayment of compensation in the amount of \$351,057.54 as he forfeited his entitlement to compensation for this period. The Board also finds that OWCP properly found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. The Board further finds that OWCP improperly required recovery of the overpayment by deducting \$5,000.00 from his compensation payments every 28 days.

³² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6 6.500.8(c)(1) (September 2018).

³³ *Id.* at 6.500.8(c)(2).

³⁴ *Supra* note 32.

³⁵ *See supra* note 33. *See also* *L.M.*, Docket No. 21-0455 (issued February 28, 2022); *M.W.*, 20-1107 (issued March 17, 2021).

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2019 decision of the Office of Workers' Compensation Programs regarding the forfeiture is affirmed. The January 7, 2019 decision of the Office of Workers' Compensation Programs regarding the overpayment of compensation is affirmed in part and reversed in part.

Issued: July 6, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board