

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

M.S., Appellant)	
)	
and)	Docket No. 21-0815
)	Issued: January 11, 2024
U.S. POSTAL SERVICE, POST OFFICE, Piscataway, NJ, Employer)	
)	

Appearances: *Case Submitted on the Record*
Edwin A. Abrahamsen, Jr., Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 5, 2021 appellant, through counsel, filed a timely appeal from April 2, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 2, 2021 decisions, OWCP received additional evidence. 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 or 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant forfeited his right to compensation for the period August 14, 2003 through December 14, 2017, pursuant 5 U.S.C. § 8106(b)(2) of FECA, 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 \$491,884.53, compromised to \$469,298.90, as he forfeited his entitlement to compensation from August 14, 2003 through December 14, 2017; (3) whether OWCP properly found appellant 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 \$1,625.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 22, 1992 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 21, 1992 he injured his left leg when he slipped on a loose brick when ascending stairs while in the performance of duty. He stopped work on May 30, 1992. OWCP accepted the claim for unspecified internal derangement of the left knee, other intervertebral disc displacement of the lumbar spine, lumbar radiculopathy, and a sprain of unspecified sites of the left knee and leg. It paid appellant wage-loss compensation.

On October 21, 2004, November 14, 2004, December 26, 2005, February 23, 2007, January 1, 2008, January 2, 2009, December 26, 2009, December 27, 2010, November 28, 2011, November 28, 2012, November 13, 2013, December 1, 2014, December 9, 2015, December 12, 2016, December 4, 2017, and November 20, 2018, appellant signed EN-1032 forms, which contained language advising him what type of employment activities, earnings, and volunteer activities that he was required to report for each 15-month period prior to the time he signed each form. The EN-1032 forms instructed him 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, and providing services in exchange for money, goods, or other services. The forms contained certification clauses informing him of the consequences of not accurately reporting his employment activities, such as being subjected to criminal penalties and losing the right to receive workers compensation. On the EN-1032 forms, appellant indicated that, during the previous 15-month period covered by each form, he had not worked for an employer or been self-employed, was not involved in a business enterprise, and had not engaged in volunteer work.

In a report dated December 14, 2016, Dr. Scott Epstein, a Board-certified physiatrist, diagnosed complex regional pain syndrome of the left knee due to the employment injury and indicated that appellant also had spinal stenosis. He found that he was unable to work as a letter

⁴ Docket No. 02-1922 (issued February 11, 2004).

carrier. Dr. Epstein related, “[Appellant] currently works as a preacher. He was doing that when I originally saw him in 2004 and he continues with that.”

On January 10, 2017 OWCP noted that Dr. Epstein had indicated that appellant was currently working as a preacher. It requested that he provide information about his exact duties and income from working as a preacher.

In a January 23, 2017 response, appellant related that he had been ordained as a minister in 1987, but no longer worked as a preacher due to his disability.

On February 10, 2017 Dr. Epstein indicated that appellant had informed him that he had “not been preaching or heading a ministry for many years.”

In an April 18, 2019 coverletter, the employing establishment’s Office of Inspector General (OIG), advised that an investigation had disclosed that appellant held the position of ministry leader/senior pastor with the Faith Christian Outreach Center (FCOC). He noted that a bank record search warrant was served upon appellant’s bank account and the search warrant revealed that appellant had received over \$20,000.00 in monetary payments from FCOC or “other religious/pastoral referenced persons and entities” from 2004 through July 2017, but had failed to report his earnings and employment activity on OWCP’s annual disclosure forms. The OIG requested that OWCP issue a forfeiture decision as documentation revealed that appellant had not reported such earnings or activity on the EN-1032’s and because he had written an affirmative denial asserting that he was not involved in work as a preacher. With the April 18, 2019 letter, the OIG submitted physical evidence, including photographs, an x-ray, and a video of a sermon.⁵ Also enclosed were copies of checks made out to appellant, to appellant and his wife, and to only his wife for the period June 7, 2004 through July 14, 2017. OIG further submitted a list of appellant’s deposits of funds from the FCOC and other individuals from 2004 through 2016.

In an April 18, 2019 report of investigation, D.D., an OIG special agent, advised that his office had received information that appellant was a pastor of a local church. He related that an investigation confirmed that he was a ministry leader/senior pastor at FCOC. D.D. indicated that a bank record search revealed that appellant had received over \$20,000.00 from the FCOC or “other religious/pastoral referenced persons and entitles from 2004 through July 2017.” He related that the OIG’s office had obtained a video of appellant preaching a sermon and noted that the online home page of the FCOC listed him as the senior pastor and he and his wife as the “spiritual leaders of [FCOC]...” D.D. advised that appellant had received money from the FCOC or as direct personal checks from the congregation of approximately \$13,797.00 in 2004, \$14,660.00 in 2005, \$5,010.00 in 2006, \$3,925.00 in 2007, \$550.00 in 2008, \$5,500.00 in 2009, \$1,480.00 in 2010, \$1,140.00 in 2012, \$1,841.00 in 2013, \$425.00 in 2014, \$350.00 in 2015, \$345.00 in 2016, and \$50.00 in 2017. He further indicated that during these periods appellant’s wife received thousands of dollars and that appellant often withdrew funds that were “directed from the church to his wife.” D.D. maintained that he must forfeit his entitlement to compensation payments from January 15, 2003 to December 4, 2017, the dates covered by attached EN-1032 forms.

⁵ While the case record includes a memorandum indicating that such physical evidence was submitted, the physical evidence itself was not included in the case record or otherwise made available to the Board.

In a memorandum of interview dated November 20, 2019, D.D. and K.S., also an OIG special agent, indicated that they had interviewed appellant on that date. The agents informed him that he had been under surveillance and that they had reviewed the financial records for the FCOC and his bank account. D.D. and K.S. provided appellant with the opportunity to review the video and financial records, but he refused. He related that he and his wife were pastors and had started the FCOC in 1995. Appellant indicated that his wife “does most of the preaching and teaching” but that the financial records were in his name “because of a lot of people are judgmental about going to a church with a black woman pastor.” He indicated that “his wife typically runs the show, but he will give a small sermon, prayer and the like, which requires him to stand up for a small amount of time. He will also lead the service in prayer, create a Daily Dose message, [and] go to Walmart to buy food or supplies for church gatherings.” The agents indicated that appellant “acknowledges that he is around the church often and he does perform church[-]related functions, which he would call part-time work at times and volunteer work at other times.” He agreed that he should have reported his activity at the FCOC to OWCP and should have reported the checks given to him directly as income. D.D. and K.S. related, “He acknowledged that checks for the Church are regularly given in his name” and that he frequently deposited the money given to the FCOC in the bank.

Appellant advised that his wife received monthly payments from the FCOC, including payments for housing and a car. He summarized his FCOC activity from 2004 to 2018 as doing sporadic work around the church, making deposits at the bank, running errands, occasionally giving sermons, and leading prayers. Appellant responded in the affirmative when the agents asked whether he considered the money income and whether he would have reported the checks to OWCP, including checks labeled gifts, vacation, birthday, and housing. He also agreed that he should have reported his activities as volunteer work. Appellant advised that his answers on the EN-1032 forms dated October 21, 2004 through November 20, 2018 were incorrect as he had volunteered at FCOC during this time. He further concurred that he should have reported any checks given to him to OWCP. Appellant reviewed bank records with the OIG agents and agreed that he should have reported \$13,797.00 in 2004, \$14,660.00 in 2005, \$5,010.00 in 2006, \$3,975.00 in 2007, \$550.00 in 2008, \$5,500.00 in 2009, \$1,480.00 in 2010, \$1,140.00 in 2012, \$1,841.00 in 2013, \$425.00 in 2014, \$350.00 in 2015, \$345.00 in 2016, and \$50.00 in 2017. D.D. and K.S. advised, “[Appellant] reiterated that the money received from the checks was income he should have reported. He said if his name was on the check he should have reported it to the DOL. Appellant agrees that some of his work at the Church would be called part-time work.” The agents provided bank records from 2004 to 2017.

The OIG submitted a copy of a webpage for the FCOC from April 2, 2017 listing appellant as the ministry leader/senior pastor.

On November 26, 2019 appellant initialed each page of the November 20, 2019 memorandum of interview. At the end of the document, he signed his name certifying that the information contained was true and accurate.

By decision dated May 15, 2020, OWCP found that appellant had forfeited his entitlement to compensation from August 14, 2003 through December 14, 2017 under 5 U.S.C. § 8106(b) as he knowingly failed to report earnings from employment and employment/volunteer activities.

On May 28, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

On July 8, 2020 OWCP advised appellant of its preliminary determination that he had received a \$491,884.53 overpayment of compensation for the period August 14, 2003 through December 14, 2017 as he had forfeited his entitlement to compensation. It further notified him of its preliminary finding that he was at fault in the creation of the overpayment. OWCP provided appellant with an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoupment hearing.

On July 24, 2020 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He subsequently withdrew his hearing request.

In a completed Form OWCP-20 dated August 6, 2020, appellant provided monthly income of \$6,852.30 and listed monthly expenses of \$7,075.01. He indicated that he paid \$1,653.07 for a mortgage, \$550.00 for food, \$300.00 for clothing, \$1,494.00 for utilities, and \$2,504.63 in other expenses. Appellant also paid loan installments of \$486.31. He indicated that he had no assets.

A telephonic hearing was held on September 17, 2020 regarding the May 15, 2020 forfeiture decision. During the hearing, appellant testified that he was ordained in 1987 and worked with his wife as a minister through May 1992. He advised that he had never been paid a salary from the FCOC, but his wife did. Appellant indicated that the Board of Directors for the FCOC paid her salary. He related that during the period in which he completed EN-1032 forms, he received birthday and Christmas gifts from parishioners, but did not consider this income. Appellant asserted that after his 1992 injury he would occasionally pray, but otherwise just sat at the service.

Appellant related that the agents told him that he did not need a lawyer. One of the agents advised him that he should have reported his volunteer work, even if it was just riding with his wife to the store and should have reported the checks. Appellant indicated that his church role had changed after his injury. His daughter was an assistant pastor and provided five-minute daily messages online for the church. When his wife and daughter were both sick, appellant would read a scripture and prayer for the online posting. He viewed this as practicing his faith rather than work. Appellant advised that he had repeatedly informed the agents that he was not working, preaching or teaching at the church. He indicated that he had not intended to deceive OWCP.

On December 2, 2020 OWCP's hearing representative agreed to reschedule a hearing on January 8, 2021 as OIG had now provided copies of the evidence from the investigation to counsel.

Thereafter, OWCP received a February 22, 2007 letter from A.A., the financial administrator of FCOC. A.A. advised that appellant's wife received \$10,612.00 for housing in 2005 and \$18,450.00 for housing in 2006.

A telephonic hearing was held on January 8, 2021 on the forfeiture and the preliminary overpayment determination. During the hearing, appellant related that two agents had come to his house on November 20 and 26, 2019. One described the memorandum of interview saying that he should have reported gifts in his name or of the name of him and his wife to OWCP. The agent told appellant that signing the statement meant that he agreed that he should have reported gifts. Appellant did not read the whole document. He indicated that he accompanied his wife to make bank deposits every five or six months and would go to the store for supplies approximately once a month. Appellant asserted that while he was listed as pastor or president on the church

incorporation paperwork, he did not perform regular work in this capacity from 2004 to 2018. He advised that the bylaws provided that, in the event of disability of the president, the vice president, or assistant pastor, took over. Appellant's wife took over all the duties and received the salary from the church for the entire period. He sometimes said a prayer at the end of the service and gave approximately one sermon a year. Regarding his statement to the agents that he considered the gifts income, appellant asserted that the agent had told him that anything with his name should have been put down as a salary. In 2004 and 2005 appellant's wife received compensation for housing. At the beginning, the checks were written to him as president even though his wife did the work. Following the purchase of the house, his wife received a salary from the church. People made checks out as gifts to him and his wife as a show of respect. The hearing representative asked appellant if he had read the pages that he had initialed. Appellant related that he had not really read the pages. He believed that agreeing with the agents that he should have reported Christmas and birthday gifts would stop the agents from subpoenaing church members.

A.A. testified during the hearing. She advised that she was an administrator and finance person for the church from 2004 through 2007. A.A. asserted that appellant's wife was the primary pastor because he was disabled. She noted that she had signed a letter on February 22, 2007 confirming the amount paid to appellant's wife, J.S., for housing for 2005 and 2006. A.A. indicated that the church subsequently paid her a salary. She maintained that it was not for any work performed by appellant.

Counsel maintained that the money received after 2004 and 2005 was a *de minimus* amount. He also contended that the OIG agents failed to interview church members to determine the amount of work that appellant performed. Counsel advised that the payments received in 2004 and 2005 were for appellant's wife, and cited as support the February 22, 2007 letter from A.A. He asserted that Board case law required agents to obtain witness statements supporting that the alleged activity was performed. Appellant maintained that he would be unable to repay the overpayment as he had no assets.

Subsequent to the hearing, appellant submitted additional supporting financial documentation. He submitted a bill for \$248.04 for a gas furnace, \$49.99 for a security system, \$267.33 and \$76.79 for past due dental and vision insurance, \$767.98 for propane, \$599.99 for cable, \$291.30 for insurance, \$1,654.07 for a mortgage, \$450.81 for health care, \$12.12 for life insurance, \$250.85 for car insurance, \$742.75 for an automobile, \$766.88 for electricity. Appellant further submitted bank statements.

In a January 25, 2021 response to the hearing transcript, D.D. related that appellant had spent two hours reading the Memorandum of Interview and had even corrected a date on page eight. He maintained that appellant had reviewed the document for accuracy, initialed the bottom of each page, and certified that the document was true and accurate. D.D. asserted that appellant had agreed to voluntarily speak with the agents on November 20, 2019 and had not requested counsel. He advised that on November 26, 2019 he had reviewed in detail the Memorandum of Interview, the exhibits, and the bank records. D.D. related that appellant had "spent over two hours reviewing the individual checks and writing his initials on the individual checks he believed he should have reported." He noted that appellant had characterized his church activities as part-time and volunteer work. D.D. indicated that appellant related that he frequently deposited the church money at the bank and agreed that the money and in-kind benefits he received constituted income. Appellant did not allege during the interview that checks written to him were for his wife. D.D. advised that he had asked the OIG agents not to speak to other church members as he believed that

it would “damage his standing in the community and possibly cause his wife to lose her job.” He related:

“[Appellant] admitted to the conduct in question, signed-off on the Memorandum of Interview, and spent over two hours initially and reviewing individual checks he believes should have been reported. There were no remaining issues in dispute. At the request of [appellant], we did not conduct additional interviews because [he] requested that we not interview individuals affiliated with the church, and we did not have an investigative need for additional information because [he] admitted to the conduct in question.”

D.D. noted that appellant had agreed that he performed part-time work and that he had received money that should have been reported as income.

In an OIG internal memorandum dated February 1, 2020, R.C., an attorney for the OIG, advised D.D. that appellant’s unreported earnings from the FCOC were not *de minimus*. He asserted that, in contrast to *J.W.*⁶ Appellant actively participated in church business by leading prayers, giving sermons, assisting in finances, and making purchases. R.C. indicated that the facts resembled those of *L.B.*,⁷ where the claimant helped conduct church services and lead prayers. He noted that in *L.B.*, the Board noted that the claimant had not denied his activities when he reviewed a copy of the video surveillance and found that his admissions established the extent of his activities. R.C. advised that appellant’s wife would have had to pay another individual for his services.

By decision dated April 2, 2021, OWCP’s hearing representative affirmed the May 15, 2020 forfeiture determination. By separate decision of even date, OWCP’s hearing representative finalized the finding that appellant received a \$491,884.53 overpayment of compensation as he forfeited his entitlement to compensation for the period August 14, 2003 through December 14, 2017. She further finalized the finding that he was with fault in the creation of the overpayment and thus not entitled to waiver of recovery. The hearing representative required recovery of the overpayment by deducting \$1,625.00 from his continuing compensation payments every 28 days.⁸

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA⁹ provides that an employee who “fails to make an affidavit or report when required or 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.”¹⁰

⁶ Docket No. 07-0565 (issued November 16, 2007).

⁷ Docket No. 16-1385 (issued October 3, 2017).

⁸ The hearing representative determined that the debt would take 442.7 months to repay and thus compromised the debt by \$22,485.63 based on appellant’s life expectancy and found that the new principal balance was \$469,298.90.

⁹ See *supra* note 2.

¹⁰ 5 U.S.C. § 8106(b).

An employee, however, can only be subjected to the forfeiture provision of 5 U.S.C. § 8106 if he or she knowingly failed to report employment or earnings. It is not enough to merely establish that there were unreported earnings. The Board has recognized that forfeiture is a penalty, and, as a penalty provision, it must be narrowly construed.¹¹ The term knowingly is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.¹²

OWCP regulations define earnings from employment or self-employment as: (1) gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any offer 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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

OWCP properly determined that appellant forfeited his right to compensation for the period August 14, 2003 through December 14, 2017, pursuant 5 U.S.C. § 8106(b)(2) of FECA, because he knowingly failed to report his employment activities and earnings.

OWCP found that appellant forfeited his compensation from August 14, 2003 through December 14, 2017 as he failed to report employment activities on EN-1032 forms covering these periods.

The EN-1032 forms sent by OWCP to appellant advised him of his responsibility to complete the forms and provide all relevant information concerning his employment status and earnings during the 15-month period covered by the forms. The forms he signed noted that he must report all employment, self-employment, or involvement in business enterprises. This included such activities as overseeing a business of any kind, including involvement in any enterprise she owned. The forms further requested that appellant indicate whether he had performed volunteer work for any form of monetary or in-kind compensation.

The EN-1032 forms of record expressly indicate that if work was performed in furtherance of another's business, the employee must show the rate of pay of what it would cost the employer or organization to hire someone to perform the work actually performed. The Board has held that the test of what constitutes reportable earnings on an EN-1032 form is not whether appellant received a salary, but what it would cost to have someone else do the work.¹⁵

In EN-1032 forms signed November 14, 2004, December 25, 2005, February 23, 2007, January 1, 2008, January 2, 2009, December 26, 2009, December 27, 2010, November 28, 2011,

¹¹ *J.T.*, Docket No. 20-1563 (issued April 9, 2021); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

¹² 20 C.F.R. § 10.5(n); *R.A.*, Docket No. 18-0406 (issued January 28, 2019).

¹³ *Id.* at § 10.5(g).

¹⁴ *Id.*

¹⁵ *See L.B.*, Docket No. 16-1385 (issued October 3, 2017); *Anthony Derenze*, 40 ECAB 504 (1988).

November 28, 2012, November 13, 2013, December 1, 2014, December 9, 2015, December 12, 2016, December 4, 2017, and November 20, 2018, appellant reported that he had not have any earnings. He further reported that he had not engaged in any employment, self-employment, engaged in any business enterprise, or performed volunteer work for any form of compensation during the 15-month period covered by each form.

In an investigative report dated April 18, 2019, D.D. advised that an investigation disclosed that appellant was a ministry leader/senior pastor at FCOC. He related that bank records showed that appellant received over \$20,000.00 from the church during the period 2004 through July 2017. D.D. indicated that he had received approximately \$13,797.00 in 2004; \$14,660.00 in 2005; \$5,010.00 in 2006; \$3,925.00 in 2007; \$550.00 in 2008; \$5,500.00 in 2009; \$1,480.00 in 2010; \$1,140.00 in 2012; \$1,841.00 in 2013; \$425.00 in 2014; \$350.00 in 2015; \$345.00 in 2016; and \$50.00 in 2017 from either FCOC or from those associated with the church.

D.D. and K.S. interviewed appellant on November 20, 2019. Appellant told the agents that his wife was primarily responsible for preaching and teaching, but that he occasionally led prayers, gave sermons, deposited money, or bought food or supplies. He advised that he considered the checks given in his name to be income. Appellant acknowledged that he should have reported \$13,797.00 in 2004; \$14,660.00 in 2005; \$5,010.00 in 2006; \$3,975.00 in 2007; \$550.00 in 2008; \$5,500.00 in 2009; \$1,480.00 in 2010; \$1,140.00 in 2012; \$1,841.00 in 2013; \$425.00 in 2014; \$350.00 in 2015; \$345.00 in 2016; and \$50.00 in 2017. He also acknowledged that some of the activities that he performed at the FCOC would be considered part-time employment. Appellant indicated that the EN-1032 forms that he signed from October 21, 2004 through November 20, 2018 were incorrect as he had volunteered at FCOC during the covered periods. On November 26, 2019 he initialed each page of the November 20, 2019 memorandum of interview and signed his name at the end of the document certifying that information it contained was accurate.

During the hearing, appellant testified that he had not fully reviewed the investigative memorandum and that he had not performed any regular work for the church from 2004 to 2018. He maintained that the agents had told him that signing the report meant that he agreed that he should have reported the amounts received as a gift. Appellant advised that initially he received checks written to him as head of the church even though it was his wife who was working. He indicated that he conducted one sermon a year, occasionally said a prayer at the end of the service, and shopped for church supplies once a month. Appellant related that he agreed that he should have reported the gifts to OWCP to stop the agents from subpoenaing church members.

A.A., who managed finances for the FCOC from 2004 to 2007, advised that appellant's wife was the primary pastor due to his disability. On February 22, 2007 she confirmed the amount that his wife had received for housing in 2005 and 2006. A.A. indicated that the church subsequently paid appellant's wife a salary solely for the work that she performed.

In a response dated January 25, 2021, D.D. maintained that appellant had reviewed the memorandum of interview for two hours, checking its accuracy, and had initially the bottom of each page to certify the document was accurate. He had also reviewed the exhibits and bank records and initialed the checks that he believed that he should have reported. D.D. noted that appellant agreed that he had performed part-time and volunteer work at the church and had not alleged during the interview that the checks that he had received were for his wife. Appellant also requested that the agents not speak to members of the church to preserve his reputation and his wife's job. D.D. contended that appellant had admitted his activities and earnings and identified

the checks that should have been reported, and thus, based on his admissions, at his request the agents had not interviewed church members.

The Board finds that appellant forfeited entitlement to wage loss for the period August 14, 2003 through December 14, 2017. On the forms covering this period appellant indicated that he was not employment or self-employed, had no earnings, and performed no volunteer work. However, he admitted that he should have reported \$13,797.00 in 2004; \$14,660.00 in 2005; \$5,010.00 in 2006; \$3,975.00 in 2007; \$550.00 in 2008; \$5,500.00 in 2009; \$1,480.00 in 2010; \$1,140.00 in 2012; \$1,841.00 in 2013; \$425.00 in 2014; \$350.00 in 2015; \$345.00 in 2016; and \$50.00 in 2017. The checks were received during each period covered by EN-1032 forms dated August 14, 2003 through November 20, 2018. Appellant further admitted that he had incorrectly completed the EN-1032 forms dated August 14, 2003 through November 20, 2018 as he had volunteered for the FOCO during the covered periods. When a Form EN-1032 is improperly completed resulting in a finding of forfeiture, the period of the forfeiture is the entire 15-month period covered by the form in question.¹⁶

While the investigative report was not supported by signed affidavits or declarations of witnesses such as a church parishioner, the Board finds that such support is unnecessary in this case to prove appellant's activities as he admitted the allegations contained in the investigative interview.¹⁷ The Board has previously held that work as a pastor or performing volunteer activities for a church is required to be included on EN-1032 forms.¹⁸ Based on appellant's admission, he received income and performed part-time work and volunteer activities during the period in question.

Appellant can be subject to the forfeiture provision of section 8106(c) only if he or she knowingly failed to report earnings or employment. OWCP has the burden of proof to establish that a claimant did, either with knowledge, consciously, willfully, or intentionally, fail to report earnings from employment.¹⁹ The Board finds that appellant's admission that he should have reported the money as income and his activities as either volunteer or part-time work, is persuasive evidence that he knew that he had income from employment and performed work activities, which he failed to disclose on the EN-1032 form. His signing of a strongly worded certification clause on the EN-1032 forms demonstrates that he was aware of the materiality of his failure to report his employment activity.²⁰ Therefore, appellant knowingly failed to comply with the reporting requirements from August 14, 2003 through December 14, 2017. OWCP, consequently, properly found that he forfeited his entitlement to compensation.

Counsel contends that appellant performed *de minimus* employment activities and received *de minimus* gifts from parishioners that failed to rise to the level of income. As noted, however,

¹⁶ *K.P.*, Docket No. 20-0127 (issued August 10, 2021).

¹⁷ *L.B.*, *supra* note 15.

¹⁸ *Id.*; *see also C.D.*, Docket No. 14-1165 (issued July 8, 2015).

¹⁹ *See S.M.*, Docket No. 16-1612 (issued April 11, 2018).

²⁰ *C.W.*, Docket No. 18-1557 (issued June 25, 2019); *M.O.*, Docket No. 18-0686 (issued January 25, 2019).

by his own admission he failed to fully disclose his employment activities, volunteer work, and earnings on EN-1032 forms.

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.²¹ 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.”²²

Section 10.529 (b) of OWCP’s implementing regulations provides as follows: “(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.”²³

The determination that the debt has been compromised does not carry the right to a hearing or to review by the Board.²⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant received an overpayment of compensation in the amount of \$491,884.53, compromised to \$469,298.90, as he forfeited his entitlement to compensation from August 14, 2003 through December 14, 2017.

OWCP’s regulations provide that OWCP must declare an overpayment of compensation for any compensation already paid for the period of a given forfeiture of compensation.²⁵ If a claimant has any employment, including self-employment or involvement in a business enterprise, during a period covered by a EN-1032 form, which he or she fails to report, the claimant is not entitled to compensation for any portion of the period covered by the report, even though he or she may not have had earnings during a portion of that period.²⁶ Appellant had earnings that he did not disclose on Forms EN-1032 covering the period August 14, 2003 through December 14, 2017, and thus received an overpayment of compensation. OWCP calculated the amount that he had received during this period by determining the amount of the gross compensation paid,

²¹ 5 U.S.C. § 8102(b).

²² *Id.* at § 8129(a).

²³ 20 C.F.R. § 10.529.

²⁴ *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.6 (September 2020). *See S.R.*, Docket No. 21-0492 (issued March 23, 2022).

²⁵ *Supra* note 21.

²⁶ *Id.*

\$491,884.53.²⁷ The hearing representative found that the debt would take 442.7 months to repay and thus compromised the debt by \$22,485.63 based on appellant's life expectancy and found that the new principal balance was \$469,298.90. The Board therefore finds that appellant received an overpayment of compensation in the amount of \$491,884.53, compromised to \$469,298.90, for the period August 14, 2003 through December 14, 2017.

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."²⁸ No waiver of recovery of an overpayment is possible if the claimant is at fault in the creation of the overpayment.²⁹

On the issue of fault, 20 C.F.R. § 10.433(a) provides that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact, which the individual knew or should have known to be incorrect; (2) failed to furnish information, which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment, which the individual knew or should have been expected to know was incorrect.³⁰

With respect to whether an individual is without fault, section 10.433(b) of OWCP regulations provides that whether 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.³¹

ANALYSIS -- ISSUE 3

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

As discussed above, the record supports that appellant received earnings and engaged in employment activity and volunteer work for the period August 14, 2003 through December 14, 2017.

The explicit language of the EN-1032 forms demonstrates that appellant knew or should have known that the nature of his activities at the FCOC required him to report such employment

²⁷ See *Alan L. Trindle, Sr.*, 53 ECAB 487 (2002) (where the Board found that gross compensation represented the amount of overpayment from forfeiture of compensation). See also *K.R.*, Docket No. 14-0434 (issued October 7, 2014).

²⁸ 5 U.S.C. § 8129; see *Linda E. Padilla*, 45 ECAB 768 (1994).

²⁹ See *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *M.O.*, *supra* note 20.

³⁰ 20 C.F.R. § 10.433(a).

³¹ *Id.* at § 10.433(b).

activities, volunteer work and earnings on the forms.³² His failure to accurately report his earnings and employment activities on the EN-1032 forms constitutes a failure to provide information, which he knew or should have known to be material in the creation of the overpayment.³³ Consequently, appellant is precluded from a waiver of recovery of the overpayment.

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.³⁴

Section 10.411 of OWCP's regulations provides in pertinent part:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later 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.”³⁵

Under OWCP's procedures, the compromise of all or part of the overpayment and any charges may be made depending upon the individual claimant's financial circumstances to set a repayment schedule. Such a determination is made at the time the repayment schedule is established.³⁶ Compromise is a matter, which rests in the discretion of OWCP and is not subject to review by the Board.³⁷

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,625.00 from appellant's continuing compensation payments every 28 days.

OWCP gave due regard to the financial information submitted, as well as the facts set forth in 20 C.F.R. § 10.441, including the compromised overpayment amount, and found that this method of recovery would minimize resulting hardship. OWCP's hearing representative found that appellant had documented monthly income of \$6,968.10 and monthly expenses of \$4,283.48. Therefore, OWCP properly required recovery of the overpayment by deducting \$1,625.00 every 28 days from appellant's continuing compensation benefits.

³² See *M.O.*, *supra* note 20; *J.A.*, Docket No. 14-1863 (issued July 7, 2015).

³³ *K.P.*, *supra* note 16; *B.K.*, Docket No. 17-0406 (issued December 12, 2017).

³⁴ 20 C.F.R. § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

³⁵ *Id.* at § 10.441(a).

³⁶ *Supra* note 24 at Chapter 6.500.6 (September 2020); see *S.R.*, *supra* note 24.

³⁷ *M.S.*, Docket No. 20-0068 (issued May 14, 2021).

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited his right to compensation for the period August 14, 2003 through December 14, 2017, pursuant 5 U.S.C. § 8106(b)(2) of FECA, because he knowingly failed to report his employment activities and earnings. The Board further finds that OWCP properly found that he received an overpayment of compensation in the amount of \$491,884.53, compromised to \$469,298.90, as he forfeited his entitlement to compensation from August 14, 2003 through December 14, 2017 and that OWCP properly found him at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,625.00 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 11, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board