

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

D.T., Appellant)	
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)	
and)	Docket No. 25-0559
U.S. POSTAL SERVICE, HAMPTON PARK POST OFFICE, Capitol Heights, MD, Employer)	Issued: July 10, 2025
)	
)	

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 16, 2025 appellant filed a timely appeal from March 17, 2025 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant forfeited her entitlement to compensation for the period June 29, 2023 through March 22, 2024, pursuant to 5 U.S.C. § 8106(b)(2) of FECA, because she knowingly failed to report her employment activities; (2) whether OWCP properly found that appellant received an overpayment of compensation in the amount of \$23,087.30 for the period June 29, 2023 through March 22, 2024 as she forfeited her

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the March 17, 2025 decision, 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 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.*

entitlement to compensation for this period; and (3) whether OWCP properly found appellant at fault in the creation of the overpayment which occurred due to her forfeiture of compensation, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On May 15, 2023 appellant, then a 59-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 2023 she sustained bodily injuries when she was struck by a forklift while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for contusion of right lower leg, impingement syndrome of left shoulder, and sprain of ligaments of lumbar spine.

On July 3, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work. In Section 2 of the Form CA-7, appellant claimed disability during the period June 28 through 30, 2023. Section 3 of the Form CA-7 advised that claimants “must report any and all earnings from employment (outside your federal job); include any employment for which you received a salary, wages, income, sales commissions, or payment of any kind during the period(s) claimed.... Include self-employment, odd jobs, involvement in a business enterprise, as well as service with the military.” The Form CA-7 warned that “[f]raudulently concealing employment or failing to report income may result in forfeiture of compensation benefits and/or criminal prosecution.” The Form CA-7 then asked specifically, “Have you worked outside your federal job for the period(s) claimed in Section 2?” If so, the claimant must report the name and address of the business, the dates worked, and the type of work. Appellant checked a box marked “No” indicating that she had not performed work outside of her federal job during the period claimed and signed the form.

Appellant signed and submitted additional CA-7 forms on July 17 and 31, August 14 and 28, September 11 and 26, October 9 and 23, November 6 and 20, December 4, 18, 22, and 28, 2023, and January 1, 15 and 29, February 12 and 27, and March 11 and 25, 2024 requesting wage-loss compensation for total disability from work. In Section 2 of the forms, she claimed disability during the period July 1, 2023 through March 22, 2024. In Section 3 of each of the forms submitted, appellant again checked a box marked “No” indicating that she had not performed work outside of her federal job for the periods claimed in Section 2. The employing establishment indicated on the reverse side of the claim forms that she was on leave without pay (LWOP) from July 1, 2023 through March 22, 2024.

OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls for the period June 29, 2023 through March 22, 2024.

In a May 22, 2024 investigative memorandum, a special agent from the employing establishment’s Office of Inspector General (OIG) indicated that appellant had worked as a district manager and then as a human services administrator for the Maryland Department of Human Services (MDHS) while receiving FECA wage-loss compensation. The OIG agent noted that she had failed to disclose her earnings with MDHS on CA-7 forms for the period June 28, 2023 through April 5, 2024. The OIG agent interviewed appellant on May 6, 2024, and indicated that she claimed she did not report the income because she held the position with MDHS prior to her accepted employment injury and her work hours with MDHS did not overlap with her schedule with the employing establishment. Enclosed with the May 22, 2024 investigative report were documents, which included payroll records showing that appellant had gross earnings with MDHS

totaling \$31,982.52 from pay period ending June 27, 2023 through pay period ending April 2, 2024.

By decision dated July 10, 2024, OWCP found that appellant forfeited her right to compensation from June 29, 2023 through March 22, 2024, pursuant to 5 U.S.C. § 8106(b), because she knowingly failed to disclose her outside earnings and employment with MDHS on CA-7 forms covering this period.

In a separate preliminary overpayment determination dated July 10, 2024, OWCP advised appellant that she had received an overpayment of compensation in the amount of \$23,087.30 because she forfeited her compensation for the period June 29, 2023 through March 22, 2024. The determination included an overpayment calculation worksheet reflecting an overpayment of \$23,087.30 for that period. OWCP also determined that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known to be incorrect. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method, it provided an overpayment action request form and advised her that she could request waiver of recovery of the overpayment. Additionally, OWCP further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecougment hearing.

On August 5, 2024 appellant, through her then-counsel, requested a prerecougment hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was conducted on January 8, 2025, at which appellant testified that she was unaware that she needed to report her income with MDHS on the CA-7 forms. Appellant also testified that the employing establishment was aware of her employment with MDHS prior to her employment injury.

By decision dated March 17, 2025, OWCP's hearing representative affirmed the July 10, 2024 forfeiture decision and finalized the July 10, 2024 preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$23,087.30 for the period June 29, 2023 through March 22, 2024 as she had forfeited her entitlement to compensation for that period. The hearing representative further finalized that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. The hearing representative required appellant to submit payments of \$650.00 per month as recovery of the overpayment.

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.³ 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.⁴ OWCP's procedures recognize that, forfeiture is a

³ 5 U.S.C. § 8106(b).

⁴ *T.G.*, Docket No. 19-0051 (issued August 20, 2019); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

penalty,⁵ and, as a penalty provision, it must be narrowly construed.⁶ The term “knowingly” is defined within OWCP’s regulations as with knowledge, consciously, willfully, or intentionally.⁷

OWCP’s 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 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant forfeited her entitlement to compensation for the period June 29, 2023 through March 22, 2024, pursuant to 5 U.S.C. § 8106(b)(2) of FECA, because she knowingly failed to report her employment activities.

The case record establishes that appellant filed CA-7 forms claiming disability from work. In Section 2 of the forms, she claimed disability during the period June 29, 2023 through March 22, 2024. Section 3 of the CA-7 forms clearly advised that claimants “must report any and all earnings from employment (outside your federal job); include any employment for which you received a salary, wages, income, sales commissions, or payment of any kind during the period(s) claimed.” The CA-7 forms warned that “[f]raudulently concealing employment or failing to report income may result in forfeiture of compensation benefits and/or criminal prosecution.” The CA-7 forms then asked specifically, “Have you worked outside your federal job for the period(s) claimed in Section 2?” Appellant checked a box marked “No” on all her submitted forms indicating that she had not performed work outside of her federal job during the periods claimed and signed the forms.

However, a May 22, 2024 investigative report from the employing establishment’s OIG showed that appellant had worked for MDHS since prior to her May 14, 2023 employment injury and that she performed work activities for MDHS during the periods covered by the CA-7 forms. The evidence accompanying the investigative report included payroll records from MDHS reflecting that she had total gross earnings of \$31,982.52 from pay period ending June 27, 2023 through pay period ending April 2, 2024.

As noted above, an employee can only be subjected to the forfeiture penalty provision of 5 U.S.C. § 8106(b) if he or she knowingly failed to report employment or earnings, and the term knowingly is defined within OWCP’s regulations as with knowledge, consciously, willfully, or intentionally.⁹ Regarding whether appellant knowingly failed to report employment activities

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.8 (September 2020). *See also* M.G., Docket No. 20-0735 (issued October 23, 2020); T.P., Docket No. 17-0717 (issued April 11, 2018); *Christine P. Burgess*, 43 ECAB 449 (1992).

⁶ *Christine P. Burgess*, *id.*

⁷ 20 C.F.R. § 10.5(n); R.A., Docket No. 18-0406 (issued January 28, 2019); I.S., Docket No. 17-0897 (issued April 9, 2018); *Anthony A. Nobile*, 44 ECAB 268 (1992).

⁸ *Id.* at § 10.5(g).

⁹ *See supra* notes 3 through 7.

from outside her federal employment, the Board notes that the explicit language of the CA-7 forms advised appellant that she should report her employment activities on the forms. Appellant's signing of the CA-7 forms containing strongly worded certification clauses further shows that she was aware of the materiality of her failure to report her employment activities. As the CA-7 forms she signed informed her that she must report employment activities, but appellant knowingly failed to do so, the Board finds that she has forfeited her entitlement to compensation.¹⁰

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.¹¹ 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."¹²

Section 10.529(b) of OWCP's implementing regulation 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."¹³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,087.30 for the period June 29, 2023 through March 22, 2024 as she forfeited her entitlement to compensation for this period.

In its July 10, 2024 forfeiture decision, OWCP found that appellant forfeited her entitlement to wage-loss compensation for the period June 29, 2023 through March 22, 2024 because she knowingly failed to report employment activities and earnings, pursuant to 5 U.S.C. § 8106(b). 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.¹⁴

The evidence of record includes payment documents and worksheets, which show that appellant received \$23,087.30 in compensation during the period June 29, 2023 through

¹⁰ See *A.A.*, Docket No. 25-0399 (issued May 20, 2025); *A.J.*, Docket No. 22-0820 (issued May 9, 2023); *K.B.*, Docket No. 21-0604 (issued January 14, 2022); *T.G.*, Docket No. 16-1379 (issued August 4, 2017); *K.Z.*, Docket No. 12-0784 (issued August 27, 2012).

¹¹ 5 U.S.C. § 8102(a).

¹² *Id.* at § 8129(a).

¹³ 20 C.F.R. § 10.529(b).

¹⁴ *Id.*

March 22, 2024. Due to the forfeiture of compensation, appellant is not entitled to this compensation and, therefore, she received a \$23,087.30 overpayment of compensation.¹⁵

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.”¹⁶

Section 10.433(a) of OWCP’s regulations provides that OWCP:

“[M]ay consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the number of benefits. A recipient who has done any of the following will be found to be at fault in creating an overpayment:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide information which he or she knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual).”¹⁷

To determine if an individual was at fault with respect to the creation of an overpayment, OWCP examines 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.¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment which occurred due to her forfeiture of compensation, thereby precluding waiver of recovery of the overpayment.

¹⁵ *Id.*; see also *D.N.*, Docket No. 24-0767 (issued October 15, 2024).

¹⁶ 5 U.S.C. § 8129; see *A.S.*, Docket No. 17-0606 (issued December 21, 2017); *Linda E. Padilla*, 45 ECAB 768 (1994).

¹⁷ 20 C.F.R. § 10.433(a); see *K.F.*, Docket No. 19-1016 (issued February 14, 2020); *Sinclair L. Taylor*, 52 ECAB 227 (2001).

¹⁸ *Id.* at § 10.433(b); *J.C.*, Docket No. 19-0911 (issued March 25, 2021); *Duane C. Rawlings*, 55 ECAB 366 (2004).

Appellant failed to provide information that she knew or should have known to be material on CA-7 forms covering the period June 29, 2023 through March 22, 2024. As discussed above, the record supports that appellant had employment activity with MDHS during the periods covered by CA-7 forms she signed and submitted, but she failed to report her employment activities on those forms.

The explicit language in Section 3 of the CA-7 forms demonstrates that appellant knew or should have known that the nature of her employment activities with MDHS would require her to report such employment activities on the forms.¹⁹ Her failure to accurately report her employment activities on the Forms CA-7 constitutes a failure to provide information which she knew or should have known to be material in the creation of the overpayment.²⁰ Consequently, appellant is at fault in the creation of the overpayment, and is thereby precluded from waiver of recovery.²¹

CONCLUSION

The Board finds that appellant forfeited her entitlement to compensation for the period June 29, 2023 through March 22, 2024, pursuant 5 U.S.C. § 8106(b)(2) of FECA, because she knowingly failed to report her employment activities. The Board further finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,087.30 for the period June 29, 2023 through March 22, 2024 as she forfeited her entitlement to compensation for this period. The Board also finds that appellant was at fault in the creation of the overpayment which occurred due to her forfeiture of compensation thereby precluding waiver of recovery of the overpayment.

¹⁹ See *A.A.*, *supra* note 10; *D.C.*, Docket No. 21-0913 (issued December 8, 2023); *K.B.*, *supra* note 10; *M.O.*, Docket No. 18-0686 (issued January 25, 2019); *J.A.*, Docket No. 14-1863 (issued July 7, 2015).

²⁰ *D.C.*, *id.*; *K.B.*, *id.*; *B.K.*, Docket No. 17-0406 (issued December 12, 2017).

²¹ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. See *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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