

² The Board notes that appellant's representative only appealed from the June 11, 2024 forfeiture decision. However, there is a January 16, 2024 overpayment decision which is also within the Board's jurisdiction. As appellant's representative did not appeal from the January 16, 2024 overpayment decision, the Board will not address that decision in this appeal. 20 C.F.R. § 501.3; *see D.K.*, Docket No. 22-0111 (issued February 8, 2023); *E.R.*, Docket No. 20-1110 (issued December 23, 2020).

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

ISSUE

The issue is whether OWCP properly determined that appellant forfeited her entitlement to compensation for the period June 8, 2014 through September 8, 2015, pursuant to 5 U.S.C. § 8106(b)(2) of FECA, because she knowingly failed to report her employment activities and earnings.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁵ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On February 4, 2014 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained multiple injuries when she slipped and fell on ice delivering mail while in the performance of duty. On March 31, 2014 OWCP accepted her claim for left ankle sprain, neck sprain, thoracic sprain, and lumbar sprain. On July 10 and August 20, 2014 it expanded the acceptance of appellant's claim to include displacement of lumbar intervertebral disc without myelopathy, lesion of the radial nerve, closed dislocation of multiple cervical vertebrae, closed dislocation of lumbar vertebrae, contusion of the left forearm, and injury to the left radial nerve. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective March 22, 2014, and on the periodic rolls, effective September 21, 2014.

On September 4, 2015 OWCP informed appellant that federal regulations required that she provide information relative to any earnings or employment on a financial disclosure statement (Form EN-1032), which was enclosed for that purpose. It notified her that she must fully answer all questions on the enclosed Form EN-1032 and return it within 30 days or her benefits would be suspended.

On September 8, 2015 appellant signed a Form EN-1032 covering the preceding 15-month period. The form required her to report all employment for which she received a salary, wages, income, sales commissions, piecework, or any payment of any kind, and that she must also report self-employment or involvement in any business enterprise in the prior 15 months. It further informed appellant that fraudulently concealing or failing to report income could subject her to

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the June 11, 2024 decision, 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.*

⁵ *Order Remanding Case*, Docket No. 21-1229 (issued July 6, 2022).

criminal prosecution. On the form, appellant responded “No” to the questions of whether she worked for any employer; whether she was self-employed in any business enterprise during the past 15 months; and whether she performed any volunteer work for which any form of monetary or in-kind compensation was received. She indicated that she was unemployed for all periods during the past 15 months.

In a March 17, 2022 investigative report, J.O., an agent for the employing establishment’s Office of the Inspector General (OIG), noted that appellant failed to report her earnings from sales she received from selling products online, and related employment activity. She did not disclose these outside earnings as required by OWCP on the claim for compensation (Form CA-7) and the financial disclosure statement (Form EN-1032). J.O. advised that appellant submitted CA-7 forms from April 2014 through December 2015 and a Form EN-1032 covering the period June 2014 through September 2015 certifying that she did not receive any outside earnings. However, appellant earned approximately \$6,811.45 in online sales from April 2014 through December 2015. J.O. noted that appellant owned an online store called “The Arts of Time and Life” that was opened in 2012. The shop listed the owners as appellant and V.M. and appellant’s bank account was associated with the shop, which sold items from February 2013 through June 30, 2016. J.O. advised that bank statements belonging to appellant showed direct deposits for varying amounts from the online marketplace during the period February through December 2014. She concluded that appellant was operating a successful online store that she did not report on a Form EN-1032 although this disclosure was required due to her receipt of FECA benefits. In a Form EN-1032 dated September 8, 2015, appellant made false statements by failing to disclose and accurately report her earnings from the online store to continue to receive workers’ compensation benefits. J.O. noted that the evidence included information obtained regarding the online store, pursuant to an OIG subpoena, which revealed that appellant created her online store on December 16, 2012, and listed the monthly payments to her personal bank account from February 2013 through June 2016. The evidence also included information from appellant’s bank account, which revealed she was associated with an active online store established in 2012 that was not disclosed in the September 8, 2015 EN-1032 form.

Accompanying the investigative report were documents from the State of Maryland, Circuit Court for Baltimore County, establishing that on November 22, 2021 appellant pleaded guilty to one felony count of the commission of fraud in the receipt of federal workers’ compensation under FECA. Specifically, she was charged with falsely representing to OWCP on a Form EN-1032 that she had not been employed and, as a result of these false representations, received more than \$27,734.01 in FECA wage-loss compensation. The case record contains the Circuit Court for Baltimore County charging document, as well as the November 22, 2021 plea agreement.

By decision dated April 7, 2023, OWCP expanded the acceptance of appellant’s claim to include cervical and lumbar radiculopathy.

By decision dated June 23, 2023, OWCP found that appellant had forfeited her entitlement to compensation for the period June 8, 2014 through September 8, 2015 under 5 U.S.C. § 8106(b), because she knowingly failed to disclose her outside earnings and employment activities. It explained that she had knowingly failed to report earnings and employment activities when submitting the Form EN-1032 dated September 8, 2015.

On June 28, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She asserted that she reported all income on the Form EN-1032 from 2014 through 2015 and that she was not an owner of the online store. Rather, appellant helped a friend set up the business. The hearing was held on November 3, 2023.

By decision dated January 16, 2024, OWCP's hearing representative affirmed the June 23, 2023 forfeiture decision.

In a letter dated June 8, 2024, appellant, through her representative, requested reconsideration of the January 16, 2024 forfeiture decision. She asserted that she did not knowingly fail to report employment activities. Appellant referenced a letter submitted by V.M. explaining the online marketplace was not appellant's business; rather, appellant merely assisted V.M. in setting up the store. A statement from V.M. dated January 8, 2024 indicated that appellant only helped to set up the online store, but she, V.M., was the owner and operator. V.M. further noted that from June 2014 through September 2015 appellant did not list or sell items on the online store and did not earn income from same.

By decision dated June 11, 2024, OWCP denied modification of the January 16, 2024 forfeiture decision.

LEGAL PRECEDENT

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 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 if he or she knowingly failed to report employment activities or earnings.⁷ OWCP's procedures recognize that forfeiture is a penalty,⁸ and, as a penalty provision, it must be narrowly construed.⁹ The term "knowingly" is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.¹⁰

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

⁶ 5 U.S.C. § 8106(b)(1) and (2), respectively.

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

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.8 (September 2020).

⁹ *Christine P. Burgess*, 43 ECAB 449 (1992).

¹⁰ 20 C.F.R. § 10.5(n); *R.A.*, Docket No. 18-0406 (issued January 28, 2019); *Anthony A. Nobile*, 44 ECAB 268 (1992).

accepts no remuneration.¹¹ 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.¹²

ANALYSIS

The Board finds that OWCP properly determined that appellant forfeited her entitlement to compensation for the period June 8, 2014 through September 8, 2015, pursuant to 5 U.S.C. § 8106(b), because she knowingly failed to report employment activities and earnings.

OWCP paid appellant wage-loss compensation for disability on the supplemental rolls, effective March 22, 2014, and on the periodic rolls, effective September 21, 2014.

According to a March 17, 2022 investigative report by the employing establishment's OIG, appellant had failed to disclose her earnings from an online store for the period April 2014 through December 2015. In a March 11, 2022, report of investigation, the employing establishment OIG agent indicated that he had reviewed her reported income from January 10, 2013 through June 30, 2016 and calculated that she had received approximately \$6,811.45 in earnings from the online store. The employing establishment's OIG provided information regarding the online store, pursuant to an OIG subpoena, which revealed that appellant created the online store on December 16, 2012, and listed the monthly payments from the online marketplace to her personal bank account from February 2013 through June 2016.

The Board finds that the evidence of record establishes that appellant operated an online store during the period June 8, 2014 through September 8, 2015 and failed to report her employment activities and earnings on an EN-1032 form she filed on September 8, 2015. Accordingly, the Board finds that OWCP properly found that appellant had forfeited her entitlement to compensation for the period June 8, 2014 through September 8, 2015 as she failed to report earnings from employment on the EN-1032 form covering this period.¹³

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited her entitlement to compensation for the period June 8, 2014 through September 8, 2015, pursuant to 5 U.S.C. § 8106(b), because she knowingly failed to report employment activities and earnings, pursuant to 5 U.S.C. § 8106(b).

¹¹ *Id.* at § 10.5(g).

¹² *Id.*

¹³ *M.G.*, Docket No. 20-0735 (issued October 23, 2020); *see G.Z.*, Docket No. 16-0892 (issued May 19, 2017); *see also E.V.*, Docket No. 15-0803 (issued October 15, 2015).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2025
Washington, DC

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

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

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