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<b>A.A., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0399</b>
	)	<b>Issued: May 20, 2025</b>
<b>DEPARTMENT OF JUSTICE, BUREAU OF</b>	)	
<b>ALCOHOL, TOBACCO, FIREARMS AND</b>	)	
<b>EXPLOSIVES, Washington, DC, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 17, 2025 appellant filed a timely appeal from January 27, and March 7 and 10, 2025 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether OWCP properly determined that appellant forfeited his entitlement to compensation for the period August 31, 2023 through March 4, 2024, pursuant to 5 U.S.C. § 8106(b)(2) of FECA, because he knowingly failed to report his employment activities; (2) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$45,495.17 for the period August 31, 2023 through March 4, 2024, because he forfeited his entitlement to compensation for this period; (3) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery; and (4) whether OWCP properly suspended appellant's wage-loss compensation and medical benefits.

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

effective January 27, 2025, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

### **FACTUAL HISTORY**

On July 18, 2023 appellant, then a 52-year-old lead personnel security specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2023 he reinjured his right shoulder, right thumb, and lower back when he attempted to sit in his work chair while in the performance of duty. He stopped work on the date of injury and has not returned. OWCP accepted the claim for sprain of right shoulder, initial encounter.

On November 7, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work. In Section 2 of the form, appellant claimed disability during the period September 7 through November 7, 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 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 he had not performed work outside of his federal job during the period claimed and signed the form. The employing establishment reported on the reverse side of the claim form that appellant was on leave without pay (LWOP) from October 30 through November 3, 2023.

By decision dated January 5, 2024, OWCP expanded the acceptance of appellant’s claim to include sprain of ligaments of lumbar spine and intervertebral disc disorders with radiculopathy, lumbar region; sciatica left side; and other biomechanical lesions of lumbar and sacral regions.

On March 4, 2024 appellant signed an additional CA-7 form requesting wage-loss compensation for total disability from work. In Section 2 of this form, appellant claimed disability during the period November 13, 2023 through March 4, 2024. In Section 3 of the Form CA-7, appellant again checked a box marked “No” indicating that he had not performed work outside of his federal job for the period claimed in Section 2. The employing establishment indicated on the reverse side of the claim form that appellant was on sick leave from September 5 through 6, 2023; annual leave from August 28 through 31, 2023; and LWOP from August 31, 2023 through March 4, 2024.

OWCP paid appellant wage-loss compensation on the supplemental rolls for the periods August 31 through October 20, 2023 and October 30, 2023 through March 4, 2024.

On April 4, 2024 the employing establishment advised that appellant had resigned effective April 1, 2024.

OWCP subsequently received a July 9, 2024 investigative report from the employing establishment’s Internal Affairs Division (IAD). The report found that appellant owned and operated Wraps on Whips, a limited-liability company (LLC) established in June 2023, and that

he performed employment activities for the business during the periods covered by his CA-7 forms. The report noted that appellant was self-employed by wrapping vehicles with a ceramic coating and protective film that he advertised on a website and social media. An undercover IAD agent reported that on December 7, 14, 15, and 29, 2023 he placed audio-recorded calls to Wraps on Whips, during which he spoke to appellant regarding wrapping a vehicle with ceramic coating and a protective film. He also video recorded a meeting with appellant in person at his business location, during which he further discussed wrapping several vehicles with ceramic coating and a protective film. Appellant was observed walking, bending, crouching, and freely moving around. He subsequently confirmed with the undercover IAD agent the proposed price of \$2,000.00 for a vehicle wrapping services wrap.

The evidence accompanying the investigative report included numerous documents, including a statement from appellant's supervisor verifying that it was appellant's voice on the audio recordings and his identity on the video recordings; statements of interviews with appellant's supervisors who reported that they had viewed social media videos which revealed appellant actively wrapping a vehicle, and indicated that appellant had not reported his outside employment; State articles of incorporation dated June 8, 2023, which documented the establishment of Wraps on Whips in appellant's name as the owner/operator; copies of advertisements for Wraps on Whips, and photographs of appellant wrapping vehicles on the internet and social media; and statements of the recorded telephone calls between the undercover IAD agent, appellant, and appellant's business partner at Wraps on Whips on December 7, 14, 15, and 29, 2023. The investigative report was also accompanied by medical evidence.

In a letter dated October 21, 2024, OWCP's medical scheduling service notified appellant that it had scheduled a November 22, 2024 second opinion examination for him with Dr. John Barry, a Board-certified orthopedic surgeon, to determine the nature and extent of his employment-related residuals and disability. It explained that his entitlement to wage-loss compensation and medical benefits would be suspended for failure to report to or for obstruction of the examination, pursuant to 5 U.S.C. § 8123(d). The letter also contained the date, time, and location of appellant's appointment and OWCP mailed it to his last known address of record.

By decision dated October 22, 2024, OWCP found that appellant had forfeited his entitlement to compensation for the period August 31, 2023 through March 4, 2024 under 5 U.S.C. § 8106(b), because he knowingly failed to disclose his outside employment on his CA-7 forms dated November 7, 2023 and March 4, 2024. It noted that he had engaged in employment activities as the owner and operator of a vehicle wrapping business, Wraps on Whips, but failed to report his employment activity on his completed CA-7 forms.

In a preliminary overpayment determination also dated October 22, 2024, OWCP advised appellant that he had received a \$45,495.17 overpayment because he forfeited his compensation for the period August 31, 2023 through March 4, 2024. The determination included an overpayment calculation worksheet reflecting an overpayment of \$45,495.17 for the periods August 31 through October 20, 2023, and October 30, 2023 through March 4, 2024. OWCP also determined that appellant was at fault in the creation of the overpayment because he failed to report information that he knew or should have known was material. It requested that he complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. Additionally, OWCP provided an

overpayment action request form and notified appellant 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 October 31, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review, regarding OWCP's October 22, 2024 forfeiture decision and preliminary overpayment determination. He disagreed that an overpayment occurred and asserted that he had not made any profits since opening his business, Wraps on Whips.

In a completed Form OWCP-20 dated October 31, 2024, appellant reported total monthly income of \$7,302.00 and total monthly expenses of \$7,080.00. He reported a total of \$140.00 assets. Appellant also submitted supporting financial documentation.

In a November 20, 2024 memorandum of telephone call (Form CA-110), OWCP indicated that appellant explained that he would not attend the scheduled appointment with Dr. Barry because he was no longer a federal employee, and he could not drive.

In a November 21, 2024 letter, OWCP's medical scheduling service notified appellant that it had rescheduled his second opinion examination with Dr. Barry for January 3, 2025. The letter also contained the date, time, and location of appellant's appointment and it was mailed to his last known address of record.

By letter dated January 7, 2025, OWCP's medical scheduling service notified OWCP that appellant failed to attend the January 3, 2025 appointment with Dr. Barry.

In a letter dated January 8, 2025, OWCP proposed to suspend appellant's compensation due to his failure to appear for the January 3, 2025 appointment with Dr. Barry. It advised that if good cause was not established, his compensation benefits would be suspended, pursuant to 5 U.S.C. § 8123(d), until he attended and fully cooperated with the examination. OWCP instructed appellant to contact it immediately if he intended to report to a rescheduled examination with Dr. Barry. Appellant was afforded 14 days to respond. No response was received.

A prerecoupment hearing was held on January 23, 2025 regarding OWCP's October 22, 2024 forfeiture decision and preliminary overpayment determination. Appellant testified that he did not realize that he was required to report earnings from outside his federal employment because he did not receive any profits from his business. He noted that he had to constantly withdraw money to keep his business afloat. Appellant further maintained that he was unable to repay the overpayment as he had no income, noting that he only received VA disability benefits to support his family.

By decision dated January 27, 2025, OWCP suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), effective that date, finding that he failed to attend the scheduled medical examination, and had not provided written evidence justifying his failure to attend. It explained that his benefits would be reinstated only after verification that he attended and fully cooperated with the examination.

By decision dated March 7, 2025, OWCP's hearing representative affirmed the October 22, 2024 forfeiture decision.

By decision dated March 10, 2025, OWCP's hearing representative finalized the October 22, 2024 preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$45,495.17 for the period August 31, 2023 through March 4, 2024 as he had forfeited his entitlement to compensation for that period. She further finalized that appellant 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 \$525.00 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.<sup>2</sup> 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.<sup>3</sup> OWCP's procedures recognize that, forfeiture is a penalty,<sup>4</sup> and, as a penalty provision, it must be narrowly construed.<sup>5</sup> The term "knowingly" is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant forfeited his entitlement to compensation for the period September 7, 2023 through March 4, 2024, pursuant 5 U.S.C. § 8106(b)(2) of FECA, because he knowingly failed to report his employment activities.

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<sup>2</sup> 5 U.S.C. § 8106(b).

<sup>3</sup> *T.G.*, Docket No. 19-0051 (issued August 20, 2019); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

<sup>4</sup> 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).

<sup>5</sup> *Christine P. Burgess*, *id.*

<sup>6</sup> 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).

<sup>7</sup> *Id.* at § 10.5(g).

<sup>8</sup> *Id.*

The case record establishes that appellant filed CA-7 forms claiming disability from work. In Section 2 of each form, appellant claimed disability during the periods September 7 through November 7, 2023, and November 13, 2023 through March 4, 2024, respectively. 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.... Include self-employment, odd jobs, involvement in a business enterprise, as well as service with the military.” The 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?” On both CA-7 forms, appellant checked a box marked “No” indicating that he had not performed work outside of his federal job during the periods claimed and signed the forms.

However, a July 9, 2024 investigative report from the employing establishment’s IAD which showed that, since June 2023, appellant owned/operated Wraps on Whips, LLC and that he performed work activities for the business during the periods covered by the CA-7 forms. The report noted that appellant was self-employed by wrapping vehicles with a ceramic coating and protective film that he advertised on the internet and social media. An undercover IAD agent reported that on December 7, 14, 15, and 29, 2023 he placed audio-recorded calls to Wraps on Whips, during which he spoke to appellant regarding wrapping a vehicle with ceramic coating and a protective film. He also video recorded an in-person meeting with appellant at his business location, during which he further discussed wrapping several vehicles with ceramic coating and a protective film. The undercover IAD agent observed appellant walking, bending, crouching, and freely moving around. Appellant subsequently confirmed with the undercover IAD agent the proposed price for his wrapping services.

The evidence accompanying the investigative report included numerous documents, including a statement from appellant’s supervisor verifying that it was appellant’s voice on the audio recordings and his identity on the video recordings; statements of interviews with appellant’s supervisors who reported that they had viewed social media videos which revealed appellant actively wrapping a vehicle, and indicated that appellant had not reported his outside employment; State articles of incorporation dated June 8, 2023, which documented the establishment of Wraps on Whips in appellant’s name as the owner/operator; copies of advertisements for Wraps on Whips, and photographs of appellant wrapping vehicles on the internet and social media; and statements of the recorded telephone calls between the undercover IAD agent, appellant, and appellant’s business partner at Wraps on Whips on December 7, 14, 15, and 29, 2023.

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.<sup>9</sup> Regarding whether appellant knowingly failed to report employment activities from outside his federal employment, the Board notes that the explicit language of the CA-7 forms advised appellant that he should report his employment activities on the forms. Appellant’s signing of the CA-7 forms containing strongly-worded certification clauses further shows that he was aware of the materiality of his failure to report his employment activities. As the CA-7 forms

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<sup>9</sup> See *supra* notes 12 through 16.

he signed informed him that he must report employment activities, but appellant knowingly failed to do so, the Board finds that he has forfeited his entitlement to compensation.<sup>10</sup>

The Board notes that OWCP determined the period of the forfeiture to be August 31, 2023 through March 4, 2024. However, as noted above, appellant only claimed disability for the period September 7, 2023 through March 4, 2024 in Section 2 of his CA-7 forms. Therefore the period of the forfeiture is modified to September 7, 2023 through March 4, 2024.

### **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.<sup>11</sup> 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.”<sup>12</sup>

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.”<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant received an overpayment of compensation during the period September 7 through March 4, 2024 because he forfeited his entitlement to compensation for this period.

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.<sup>14</sup> As found above, appellant forfeited his entitlement to compensation. Therefore, fact of overpayment has been established.<sup>15</sup>

In its March 10, 2025 decision, OWCP incorrectly found that appellant’s overpayment period began on August 31, 2023. As explained above, the Board modified the period of the forfeiture to September 7, 2023 through March 4, 2024. The period of the overpayment is,

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<sup>10</sup> *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).

<sup>11</sup> 5 U.S.C. § 8102(b).

<sup>12</sup> *Id.* at § 8129(a).

<sup>13</sup> 20 C.F.R. § 10.529.

<sup>14</sup> *Id.*

<sup>15</sup> *See A.N.*, Docket No. 22-0999 (issued August 4, 2023).

therefore, modified to reflect that period. The Board thus finds that the case is not in posture for decision with regard to the amount of the overpayment.<sup>16</sup>

On remand, OWCP shall recalculate the amount of the overpayment to reflect the correct period. It shall then issue a new preliminary overpayment determination with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide updated supporting financial documentation. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **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.”<sup>17</sup>

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).”<sup>18</sup>

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.<sup>19</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> 5 U.S.C. § 8129.

<sup>18</sup> 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).

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



### **ANALYSIS -- ISSUE 3**

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

Appellant failed to provide information that he knew or should have known to be material on CA-7 forms covering the period September 7, 2023 through March 4, 2024. As discussed above, the record supports that appellant had employment activity as he owned and operated Wraps on Whips, LLC during the periods covered by CA-7 forms he signed, but he failed to report his employment activities on those forms.

The explicit language in Section 3 the CA-7 forms demonstrates that appellant knew or should have known that the nature of his activities with his business Wraps on Whips would require him to report such employment activities on the forms.<sup>20</sup> His failure to accurately report his employment activities on the CA-7 forms constitutes a failure to provide information which he knew or should have known to be material in the creation of the overpayment.<sup>21</sup> Consequently, appellant is at fault in the creation of the overpayment, and is thereby precluded from waiver of recovery.<sup>22</sup>

### **LEGAL PRECEDENT -- ISSUE 4**

Section 8123(d) of FECA authorizes OWCP to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary.<sup>23</sup> The determination of the need for an examination, the type of examination, the choice of locale, and the choice of medical examiners are matters within the province and discretion of OWCP.<sup>24</sup> OWCP's regulations provide that a claimant must submit to an examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary.<sup>25</sup> Section 8123(d) of FECA and OWCP regulations provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until

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<sup>20</sup> *D.C.*, Docket No. 21-0913 (issued December 8, 2023); *M.O.*, Docket No. 18-0686 (issued January 25, 2019); *J.A.*, Docket No. 14-1863 (issued July 7, 2015).

<sup>21</sup> *D.C.*, *id.*; *K.B.*, *id.*; *B.K.*, Docket No. 17-0406 (issued December 12, 2017).

<sup>22</sup> 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. *See 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.

<sup>23</sup> *Supra* note 1 at § 8123(d).

<sup>24</sup> *See D.E.*, Docket No. 25-0193 (issued February 6, 2025); *A.P.*, Docket No. 22-0709 (issued November 25, 2024); *T.A.*, Docket No. 21-0528 (issued December 14, 2021); *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

<sup>25</sup> 20 C.F.R. § 10.320. *See also D.E.*, *id.*; *K.B.*, Docket No. 18-1593 (issued April 16, 2019).

the refusal or obstruction ceases.<sup>26</sup> OWCP's procedures provide that, before OWCP may invoke these provisions, the employee is to be provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.<sup>27</sup> If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA until the date on which the claimant agrees to attend the examination.<sup>28</sup>

#### **ANALYSIS -- ISSUE 4**

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective January 27, 2025, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

In a letter dated October 21, 2024, OWCP's medical scheduling service, notified appellant that he was being referred for a second opinion medical examination on November 22, 2024 with Dr. Barry regarding his continuing medical residuals and disability due to the accepted July 17, 2023 employment injury. The letter informed him of his obligations to attend and cooperate with the examination and explained that his compensation benefits would be suspended, pursuant to 5 U.S.C. § 8123(d), for failure to report to or for obstruction of the examination. The letter also contained the date, time, and location of appellant's appointment. OWCP mailed the letter to appellant's last known address of record. In a letter dated November 21, 2024, OWCP's medical scheduling service notified appellant that his appointment was rescheduled for January 3, 2025 with Dr. Barry. This letter also contained appropriate guidance including the date, time, and location of his appointment.<sup>29</sup> Appellant did not appear for the January 3, 2025 appointment, nor did he attempt to reschedule the appointment prior to the designated time. In a notice dated January 8, 2025, OWCP provided him 14 days to submit a valid reason in writing for his failure to attend the scheduled medical appointment. Appellant did not respond.

As appellant did not attend the examination as scheduled and failed to provide good cause for failing to appear, the Board finds that OWCP properly suspended his wage-loss compensation and medical benefits in accordance with 5 U.S.C. § 8123(d), effective January 27, 2025.<sup>30</sup>

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<sup>26</sup> See 5 U.S.C. § 8123. *Id.* at § 10.323; *A.P.*, Docket No. 19-0328 (issued August 6, 2019); *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

<sup>27</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (February 2022).

<sup>28</sup> *Id.* at Chapter 2.810.13e.

<sup>29</sup> Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule. The November 21, 2024 letter was sent by OWCP to appellant's last known address of record and is presumed to have been received by him absent any notice of nondelivery. Appellant has not submitted evidence to rebut this presumption. See *S.L.*, Docket No. 23-0887 (issued January 17, 2024); *James A. Gray*, 54 ECAB 277 (2002).

<sup>30</sup> See *R.A.*, Docket No. 25-0076 (issued January 21, 2025); *R.T.*, Docket No. 20-0933 (issued July 29, 2022); *A.H.*, Docket No. 21-0688 (issued October 6, 2021); *G.R.*, Docket No. 20-0915 (issued January 29, 2021).

### **CONCLUSION**

The Board finds that appellant forfeited his entitlement to compensation for the period September 7, 2023 through March 4, 2024, pursuant 5 U.S.C. § 8106(b)(2) of FECA, because he knowingly failed to report his employment activities. The Board further finds that appellant received an overpayment of compensation for the period September 7, 2023 through March 4, 2024 because he forfeited his entitlement to compensation for that period. The case, however, is not in posture for decision with regard to the amount of the overpayment. The Board also finds that OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. Additionally, the Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective January 27, 2025, pursuant to 5 U.S.C. § 8123(d), due to his failure to attend a scheduled medical examination.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 27, 2025 suspension decision of the Office of Workers' Compensation Programs is affirmed. The March 7, 2025 forfeiture decision of the Office of Workers' Compensation Programs is affirmed as modified. The March 10, 2025 overpayment decision of the Office of Workers' Compensation Programs is affirmed as modified in part, and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 20, 2025  
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