

§ 8106(b)(2); (2) whether appellant received an overpayment of compensation in the amount of \$36,541.27 for the period March 21, 2024 through November 28, 2025, as she forfeited her entitlement to compensation for that period; and (3) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery.

FACTUAL HISTORY

On February 11, 2024 appellant, then a 49-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 18, 2023 she sustained a right shoulder injury when the top of an all-purpose postal container struck her right arm and shoulder while in the performance of duty. She stopped work on December 18, 2023 and returned to work on December 19, 2023. Appellant stopped work again on March 21, 2024. On April 8, 2024 OWCP accepted the claim for sprain of the right acromioclavicular joint. It later expanded the acceptance of the claim to include impingement syndrome of the right shoulder, right shoulder bicipital tendinitis, cervical radiculopathy, cervical spondylosis with radiculopathy, neck strain, and cervical spinal stenosis. OWCP paid appellant wage-loss compensation on the supplemental and periodic rolls.

OWCP periodically sent appellant financial disclosure statements (Form EN-1032) requesting information with respect to employment, dependents, and receipt of other benefits. The forms instructed her to report all employment for which she received a salary, wages, income, sales commissions, piecework, or payment of any kind. Appellant also 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 strongly-worded certification clauses informing her of the consequences of not accurately reporting her employment activities, including criminal penalties and forfeiture of compensation received during the period covered by the form.

On an EN-1032 form dated December 5, 2024, appellant responded “Yes” to the question of whether she worked for any employer during the past 15 months, noting that she worked for the employing establishment commencing November 4, 2022. She responded “No” to the question of whether she had worked for any other employer, was self-employed, or involved in any business enterprise during the prior 15 months. On an EN-1032 form dated November 28, 2025, appellant marked “No” in response to the question of whether she worked for any employer during the past 15 months or was self-employed or involved in any business enterprise during the prior 15 months.

OWCP received a copy of a September 10, 2025 report from the employing establishment’s Office of Inspector General (OIG) regarding its investigation of appellant’s failure to report employment earnings and/or activities, and misrepresentation of her disability from work. The OIG report indicated that appellant had been employed by a home improvement company, in a cashier position, since January 2009, while she was in receipt of FECA disability benefits. Attachments to the OIG report included payroll records from the home improvement company, which reflected that appellant was paid \$618.57 in 2023; \$12,913.66 in 2024; and \$7,227.37 from January 1 through June 29, 2025.

By decision dated January 27, 2026, OWCP found that appellant had forfeited her entitlement to compensation for the period March 21, 2024 through November 28, 2025,

pursuant to 5 U.S.C. § 8106(b)(2). It explained that she was employed by a home improvement company as a cashier from January 29, 2009 through November 28, 2025, but knowingly failed to report employment earnings and/or activities on her December 5, 2024 and November 28, 2025 EN-1032 forms.

In a preliminary overpayment determination also dated January 27, 2026, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$36,541.27 for the period March 21, 2024 through November 28, 2025, because she had forfeited her entitlement to compensation for that period. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment. OWCP provided an overpayment action request form and informed appellant that, within 30 days, she could request a final decision based on the written evidence, or a prerecoupment hearing. It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, it notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prerecoupment hearing.

Appellant subsequently disputed the fact and amount of the overpayment. She asserted that she worked for the home improvement company part time, only averaging four hours per day, four days per week. Appellant provided supporting financial documentation and asserted that she did not report her part-time employment because she misunderstood the reporting requirements.

In an overpayment action request form dated February 19, 2026, appellant requested a decision based on the written evidence. She also requested waiver of recovery of the overpayment. On a completed Form OWCP-20 dated February 19 2026, appellant reported that she had no total monthly income and total monthly expenses of approximately \$5,020.64. She also reported no assets. Appellant submitted some supporting financial documentation.

By decision dated March 11, 2026, OWCP finalized the January 27, 2026 preliminary determination that appellant had received an overpayment of compensation in the amount of \$36,541.27 for the period March 21, 2024 through November 28, 2025 because she forfeited her entitlement to wage-loss compensation for that period. It found that she was at fault in the creation of the overpayment because she failed to report employment earnings and/or activities, thereby precluding waiver of recovery of the overpayment. OWCP required recovery of the overpayment by payment in full.

LEGAL PRECEDENT – ISSUE 1

Section 8106(b) of FECA³ 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.⁴

³ *Supra* note 1.

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

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

“(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.”⁵

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.⁶ OWCP's procedures recognize that forfeiture is a penalty,⁷ and, as a penalty provision, it must be narrowly construed.⁸ The term knowingly is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.⁹

OWCP's regulations define earnings from employment or self-employment as: (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.¹⁰ Neither lack of profits nor the characterization of the duties as a hobby removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant forfeited her entitlement to compensation for the period March 21, 2024 through November 28, 2025, because she knowingly failed to report her employment earnings and/or activities, pursuant 5 U.S.C. § 8106(b)(2).

On EN-1032 forms dated December 5, 2024 and November 28, 2025, appellant responded “No” with regard to whether she had worked for any employer other than the

⁵ 20 C.F.R. § 10.529.

⁶ *B.S.*, Docket No. 23-0393 (issued April 23, 2026); *B.B.*, Docket No. 24-0076 (issued January 13, 2026); *T.G.*, Docket No. 19-0051 (issued August 20, 2019); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.8 (May 2012). *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).

⁸ *Christine P. Burgess*, *id.*

⁹ 20 C.F.R. § 10.5(n); *B.B.*, *supra* note 6; *K.P.*, Docket No. 20-0127 (issued August 10, 2021); *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).

¹⁰ *Id.* at § 10.5(g).

¹¹ *Id.*

employing establishment during the prior 15 months. The September 10, 2025 OIG investigation report, however, found that appellant had in fact been employed by a home improvement company in a cashier position, since January 2009. In support of its findings, the OIG provided payroll records from the home improvement company, which established that appellant earned \$12,913.66 in 2024 and \$7,227.37 through June 29, 2025.

OWCP's regulations provide that, if an employee knowingly omits or understates earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required.¹² As the case record establishes that appellant failed to report employment earnings and/or activities on her EN-1032 forms covering the period March 21, 2024 through November 28, 2025, the Board finds that OWCP properly determined that she forfeited her entitlement to compensation for that period, pursuant 5 U.S.C. § 8106(b)(2).

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.¹³ 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."¹⁴

Under 5 U.S.C. § 8106(b), compensation forfeited under this subsection, if already paid, shall be recovered under section 8129 of this title, unless recovery is waived under that section.¹⁵ 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."¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$36,541.27 for the period March 21, 2024 through November 28, 2025, as she forfeited her entitlement to compensation for this period.

¹² 20 C.F.R. § 10.529(b); *see A.A.*, Docket No. 22-1313 (issued June 5, 2023); *Harold F. Franklin*, 57 ECAB 287 (2006).

¹³ 5 U.S.C. § 8102(a).

¹⁴ *Id.* at § 8129(a).

¹⁵ 20 C.F.R. § 10.5(n); *B.B. supra* note 6; *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).

¹⁶ *Id.* at § 10.529; *see also G.G.*, Docket No. 14-1848 (issued August 4, 2016).

As explained above, appellant forfeited her entitlement to compensation for the period March 21, 2024 through November 28, 2025 because she knowingly failed to report employment earnings and/or activities, 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.¹⁷

The evidence of record includes payment statements and worksheets, which show that she received \$36,541.27 in compensation for the period March 21, 2024 through November 28, 2025. Due to the forfeiture of compensation, appellant is not entitled to this compensation and, therefore, she received a \$36,541.27 overpayment of compensation.¹⁸

LEGAL PRECEDENT – ISSUE 3

Section 8129(a) of FECA provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled.¹⁹ The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”²⁰ No waiver of recovery is possible if the claimant is not “without fault” in helping to create the overpayment.²¹

In determining whether an individual is not “without fault” or alternatively, “with fault,” section 10.433(a) of Title 20 of the Code of Federal Regulations provides in relevant part:

“An individual is with fault in the creation of an overpayment who:

- (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....”²²

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 5 U.S.C. § 8129(a).

²⁰ *Id.* at § 8129(b).

²¹ *B.B., supra* note 6; *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

²² 20 C.F.R. § 10.433(a).

Section 10.433(c) of OWCP's regulations provides:

“Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.”²³

ANALYSIS -- ISSUE 3

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

The case record establishes that appellant failed to provide information which she knew or should have known to be material on her December 5, 2024 and November 28, 2025 EN-1032 forms. The language of the EN-1032 form demonstrates that appellant knew or should have known that the nature of her work would have required her to report the associated employment earnings and/or activities during the periods covered by the forms. Thus, the Board finds that she failed to furnish information, which she knew or should have known to be material to OWCP. As appellant is at fault in the creation of the overpayment, she is precluded from waiver of recovery.²⁴

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited her entitlement to compensation for the period March 21, 2024 through November 28, 2025, pursuant 5 U.S.C. § 8106(b)(2), because she knowingly failed to report her employment earnings and/or activities. The Board further finds that OWCP properly determined that appellant received an overpayment of compensation for the period March 21, 2024 through November 28, 2025 in the amount of \$36,541.27 as she forfeited her entitlement to compensation for that period. The Board also finds that OWCP properly found appellant at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

²³ *Id.* at § 10.433(c).

²⁴ See *B.B.*, *supra* note 6; *D.N.*, Docket No. 24-0767 (issued October 15, 2024); *A.T.*, Docket No. 17-0953 (issued December 20, 2017); *Harold F. Franklin*, 57 ECAB 387 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 27 and March 11, 2026 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 11, 2026
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