

² The Board notes that following the October 23, 2023 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.*

(2) whether appellant received an overpayment of compensation in the amount of \$97,387.11 for the period July 27, 2019 through May 9, 2022, as he forfeited his entitlement to compensation for this period; (3) whether OWCP properly found appellant at fault in the creation of the \$97,387.11 overpayment, thereby precluding waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the \$97,387.11 overpayment by deducting \$772.51 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On June 13, 2013 appellant, then a 56-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2013 he sustained skull and head injuries when he fell after being charged by a dog while in the performance of duty. OWCP initially accepted the claim for cervical, left wrist, lumbar and knee strains; knee chondromalacia patella; and bilateral ankle strain. It subsequently expanded the acceptance of the claim to include right knee chondromalacia patellae, and bucket handle tear of the medial meniscus. Appellant stopped work on July 27, 2019. OWCP paid him wage-loss compensation on the supplemental rolls commencing July 27, 2019, and on the periodic rolls effective August 18, 2019.

Appellant completed and signed a financial disclosure statement (Form EN-1032) on April 27, 2020, May 8, 2021, June 3, 2021, and May 9, 2022 regarding his earnings and employment activity for the preceding 15-month periods. The forms instructed him to report all employment for which he 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 certification clauses informing appellant of the consequences of not accurately reporting his employment activities, including criminal penalties and forfeiture of compensation received during the period covered by the form. On each of the above-noted forms, appellant responded "No" as to whether he had worked for any employer, was self-employed, or involved in any business enterprise during the prior 15 months.

OWCP received a copy of a September 22, 2022 report from the employing establishment's Office of Inspector General (OIG) regarding an investigation of appellant's failure to report his earnings and employment activities, and misrepresentation of his disability from work. The OIG report indicated that appellant was employed by a home healthcare company in a position described as a personal care attendant, while he was in receipt of FECA disability benefits. Attachments to the OIG report included payroll records from the home healthcare company, which reflected that appellant was paid \$11,098.89 in 2019; \$11,081.98 in 2020; and \$2,734.89 in 2021.

In a March 14, 2023 decision, OWCP found that appellant had forfeited his entitlement to compensation for the period from January 27, 2019 through March 25, 2021, pursuant to 5 U.S.C. § 8106(b). It noted that he was employed by a home healthcare company as a personal care attendant from April 16, 2018 through March 25, 2021. OWCP found that appellant knowingly failed to report earnings and/or employment activities on EN-1032 forms that he signed on April 27, 2020, May 8, 2021, June 3, 2021, and May 9, 2022.

On March 23, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated July 19, 2023, OWCP's hearing representative determined that the case was not in posture for decision as OWCP had incorrectly determined the forfeiture period. The hearing representative determined that the forfeiture period commenced on July 27, 2019, which was the date when appellant began receiving FECA wage-loss compensation, and continued through May 9, 2022.

By *de novo* decision dated September 13, 2023, OWCP found that appellant forfeited his entitlement to compensation for the period July 27, 2019 through May 9, 2022, because he knowingly failed to report earnings and/or employment activities on EN-1032 forms that he signed on April 27, 2020; May 8, 2021; June 3, 2021; and May 9, 2022.

By separate *de novo* decision dated September 13, 2023, OWCP also notified appellant of its preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$97,387.11 during the period July 27, 2019 through May 9, 2022, because he forfeited his right to wage-loss compensation during this period. It provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and requested that appellant submit supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support his reported income and expenses. Additionally, OWCP 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 October 17, 2023 appellant submitted a completed Form OWCP-20 and a request for a prerecoupment hearing.

By decision dated October 23, 2023, OWCP finalized its preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$97,387.11 for the period July 27, 2019 through May 9, 2022, and that he was at fault in the creation of the overpayment. It required recovery of the overpayment by deducting \$772.51 from appellant's continuing compensation payments, every 28 days.

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 established that appellant forfeited his right to compensation for the period July 27, 2019 through May 9, 2022, pursuant 5 U.S.C. § 8106(b)(2), because he knowingly failed to report his earnings and employment activities.

Appellant completed and signed EN-1032 forms on April 27, 2020, May 8, 2021, June 3, 2021, and May 9, 2022, regarding his earnings and employment activity for the 15 months preceding each of the filings. On each form he responded “No” with regard to whether he had worked for any employer during the prior 15 months. However, the September 22, 2022 OIG

⁵ 20 C.F.R. § 10.529.

⁶ *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); *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.*

report found that appellant was employed by a home healthcare company as a personal care attendant. In support of its findings, the OIG report provided payroll records from a home healthcare company, which established that appellant earned \$11,098.89 in 2019; \$11,081.98 in 2020; and \$2,734.89 in 2021.

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 The Board, thus, finds that OWCP has established that appellant's EN-1032 forms failed to report his earnings and employment activities. Appellant was therefore subject to forfeiture of entitlement to FECA compensation for the period July 27, 2019 through May 9, 2022.

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 for the period July 27, 2019 through May 9, 2022 in the amount of \$97,387.11 as he forfeited his 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); *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 his entitlement to compensation for the period July 27, 2019 through May 9, 2022. The evidence of record includes payment documents and worksheets, which show that he received \$97,387.11 in compensation during this period. Due to the forfeiture of compensation, appellant is not entitled to this compensation and, therefore, he received a \$97,387.11 overpayment of compensation.¹⁷

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.¹⁸ 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.”¹⁹ No waiver of recovery is possible if the claimant is not “without fault” in helping to create the overpayment.²⁰

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....”²¹

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

¹⁷ *Id.*

¹⁸ 5 U.S.C. § 8129(a).

¹⁹ *Id.* at § 8129(b).

²⁰ *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

²¹ 20 C.F.R. § 10.433(a).

those circumstances and the individual's capacity to realize that he or she is being overpaid.”²²

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 he knew or should have known to be material on the EN-1032 forms covering the period July 27, 2019 through May 9, 2022. The language of the EN-1032 form demonstrates that appellant knew or should have known that the nature of his work would have required him to report the associated earnings/employment activities during the periods covered by the forms, *i.e.*, July 27, 2019 through May 9, 2022. Thus, the Board finds that he failed to furnish information, which he knew or should have known to be material to OWCP. As appellant is at fault in the creation of the overpayment, it is not subject to waiver of recovery.²³

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.²⁴ Section 10.441(a) of the regulations provides:

“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.”²⁵

ANALYSIS -- ISSUE 4

In determining whether appellant could repay the overpayment by deducting \$772.51 from continuing compensation payments, OWCP took into account his financial information as well as factors set forth in 20 C.F.R. § 10.441, and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion. Thus, the Board finds that it properly required recovery of the

²² *Id.* at § 10.433(c).

²³ See *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).

²⁴ See *K.W.*, Docket No. 23-1166 (issued February 14, 2024); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²⁵ 20 C.F.R. § 10.441(a).

overpayment by deducting \$772.51 from appellant's continuing compensation payments, every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited his right to compensation for the period July 27, 2019 through May 9, 2022, pursuant 5 U.S.C. § 8106(b)(2), because he knowingly failed to report his employment earnings and employment activities. The Board further finds that OWCP properly determined that appellant received an overpayment of compensation for the period July 27, 2019 through May 9, 2022 in the amount of \$97,387.11 as he forfeited his entitlement to compensation for this 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, and properly required recovery of the overpayment by deducting \$772.51 from appellant's continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the September 13 and October 23, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 13, 2026
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