

mail fraud to obtain workers' compensation benefits.¹ The Board also affirmed the Office's June 10, 2002 decision finding that appellant forfeited his compensation and was at fault in creating the overpayment.

The Board modified the Office decision regarding the period of forfeiture of compensation after finding the Office's original overpayment period of March 1, 1995 to January 2, 1999 was incorrect; the period of the overpayment was found to be March 1, 1995 to September 30, 1998. The Board also found that the court-ordered restitution that appellant paid should be credited against the overpayment amount. The Board remanded the case to the Office to recalculate the amount of overpayment in light of the appropriate dates and after the two credits were applied.

In a May 29, 2003 decision, the Office found that appellant had an overpayment in the amount of \$100,731.83 for the period covering March 1, 1995 through September 30, 1998. The Office also credited appellant for the compensation he was owed but did not receive between June 15 and December 21, 2000 in the amount of \$9,181.07. The Office also credited appellant for the court-ordered restitution he paid of \$5,600.00, resulting in a final overpayment amount of \$85,950.76.

LEGAL PRECEDENT

Section 8106(b) of the Federal Employees' Compensation Act² provides in pertinent part:

“The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.... An employee who --

- (1) fails to make an affidavit or report when required; or
- (2) knowingly omits or understates any part of his earnings;

forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section.”³

¹ Docket No. 02-2246 (issued February 14, 2002).

² 5 U.S.C. § 8106(b).

³ While section 8106(b)(2) refers only to partially disabled employees, the Board has held that the test for determining partial disability is whether, for the period under consideration, the employee was in fact either totally disabled or merely partially disabled, and not whether he received compensation for that period for total or partial loss of wage-earning capacity. *Ronald H. Ripple*, 24 ECAB 254, 260 (1973). The Board explained that a totally disabled employee normally would not have any employment earnings and therefore a statutory provision about such earnings would be meaningless. *Id.* at 260.

ANALYSIS

In the prior appeal, the Board directed the Office to recalculate the amount of appellant's overpayment. The original overpayment amount was \$104,367.25, representing compensation paid from March 1, 1995 to January 2, 1999. The actual forfeiture period was March 1, 1995 to September 30, 1998, and the Office determined that compensation paid during this period totaled \$100,731.83. There is a memorandum in the record that shows for the period in question that appellant was paid \$100,731.83. As directed by the Board, the Office then deducted \$9,181.07, the amount of compensation appellant was owed but did not receive for the period between June 15 and December 21, 2000. The Office further deducted \$5,600.00, the amount appellant paid in court-ordered restitution for an overpayment of \$85,950.76.

CONCLUSION

The Office properly determined that appellant received an \$85,950.76 overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member