



dislocation of lumbar vertebra and later accepted degeneration of lumbar intervertebral disc. It authorized five low back surgeries from 1988 to 2007. Appellant received a schedule award for a four percent permanent impairment of his right lower extremity. He received compensation for wage loss and was placed on the periodic rolls effective May 23, 2006. On July 14, 2008 appellant returned to part-time modified duty.

On October 1, 2010 appellant pled guilty to knowingly and willfully using a false statement or fraud to obtain federal employees' compensation, in violation of Title 18, United States Code, Section 1920. He stipulated that from August 2006 through October 2008 he was self-employed in a cleaning service called LSB Cleaning Services, Inc., which he incorporated in November 2003. During this time, appellant cleaned a business called Cutting Edge Distributing, Inc., once a week for a fee of \$500.00 a month. He did not disclose this self-employment to OWCP. In order to continue to receive his FECA benefits, appellant submitted numerous EN1032 forms and a CA-7 on which he consistently and falsely answered "no" when questioned whether he had been self-employed during the periods covered by the forms. In particular, when appellant falsely indicated that he had not worked outside his federal employment during the period July 19 to August 8, 2008, he knew his response was false because he had been employed in his cleaning business and personally cleaned Cutting Edge Distributing, Inc., during that period. The court accepted his plea on October 4, 2010 and ordered restitution of \$10,730.05.

In a decision dated August 1, 2012, OWCP declared forfeit, under section 8106(b) of FECA, the compensation benefits appellant received from March 14, 2006 to October 24, 2008. It found that he knowingly omitted his earnings and self-employment on EN1032 forms signed on June 7, 2007, June 18, 2008 and June 23, 2009.

On August 8, 2012 OWCP made a preliminary determination that appellant was at fault in creating the resulting \$83,561.99 overpayment of compensation because he was aware or should have reasonably been aware that he was to report earnings of any kind and that he fraudulently omitted those earnings when asked on the EN1032 forms.<sup>2</sup>

Following a telephonic hearing before an OWCP hearing representative on December 26, 2012, OWCP issued a final decision on March 5, 2013 finding forfeiture and fault in the resulting overpayment. The hearing representative found that appellant was at fault. Not only did he knowingly fail to report earnings, he pled guilty to such. As fault precluded waiver of recovery of the overpayment, and as appellant failed to submit an overpayment recovery questionnaire, the hearing representative declared the full amount due and payable.

On appeal, appellant states that he faxed an overpayment recovery questionnaire to OWCP's hearing representative on December 27, 2012, a copy of which he provided to the Board.

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<sup>2</sup> OWCP also indicated that appellant was at fault on the grounds that he knowingly accepted compensation to which he was not entitled.

**LEGAL PRECEDENT -- ISSUE 1**

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 FECA, unless recovery is waived under that section.<sup>3</sup>

**ANALYSIS -- ISSUE 1**

Appellant signed EN1032 forms on June 7, 2007, June 18, 2008 and June 23, 2009 indicating that he was not self-employed or involved in any business enterprise during the previous 15 months. On October 1, 2010 he stipulated in a plea agreement that from August 2006 through October 2008 he was self-employed in a cleaning service called LSB Cleaning Services, Inc., which he incorporated in November 2003. Appellant also stipulated that during this time he cleaned a business called Cutting Edge Distributing, Inc., once a week for a fee of \$500.00 a month. He stipulated that he did not disclose this self-employment to OWCP. Indeed, appellant stipulated that he consistently and falsely answered “no” on numerous EN1032 forms when questioned whether he had been self-employed during the periods covered by the forms.

The facts are thus well established. Because appellant knowingly omitted his involvement in the cleaning enterprise, he forfeited his right to compensation with respect to the periods covered by the forms. The Board will therefore affirm OWCP’s March 5, 2013 decision on the issue of forfeiture.

**LEGAL PRECEDENT -- ISSUE 2**

OWCP may 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 received 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 amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to 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>4</sup>

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

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<sup>3</sup> 5 U.S.C. § 8106(b).

<sup>4</sup> 20 C.F.R. § 10.433(a).

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>5</sup>

### ANALYSIS -- ISSUE 2

Fact of overpayment is established by the forfeiture: appellant received compensation to which he is not entitled. The record contains appellant's compensation payment history, which shows the gross compensation of each payment made during the period in question. This confirms an overpayment of \$83,561.99. The Board will therefore affirm OWCP's March 5, 2013 decision on the issues of fact and amount of overpayment.

In its preliminary determination, OWCP found appellant at fault in creating this overpayment because he fraudulently omitted earnings on the EN1032 forms. Appellant made an incorrect statement as to a material fact which he knew was incorrect. The hearing representative agreed, finding that appellant knowingly failed to report earnings and indeed pled guilty to such.

As the Board noted earlier, each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he received 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 amount of benefits.

Court documents establish that appellant did neither. He was self-employed in a cleaning business from August 2006 through October 2008, a business that he incorporated in November 2003. Appellant cleaned a business called Cutting Edge Distributing, Inc., once a week for \$500.00 a month. Not only did he not disclose this self-employment to OWCP, he consistently and falsely answered "no" on the EN1032 forms when questioned whether he had been self-employed or involved in any business enterprise during the periods covered by the forms.

Given the stipulated facts and appellant's plea of guilty to knowingly and willfully using a false statement or fraud to obtain federal employees' compensation, the Board finds that he was at fault in creating the overpayment. The Board will therefore affirm OWCP's March 5, 2013 decision on the issue of fault.

Appellant's fault in creating this overpayment precludes any consideration by OWCP of waiver. By law, OWCP must recover the overpayment.<sup>6</sup>

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 March 5, 2013 final decision. Evidence not before OWCP will not be

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<sup>5</sup> *Id.* at § 10.433(b).

<sup>6</sup> OWCP procedures recognize that a court order stating the restitution amount will be in full satisfaction of the debt owed to the United States (a global settlement) will take precedence over its debt collection process. It is well established that to constitute a global settlement, a court order must clearly state that the restitution is meant to represent the full satisfaction of any debt owed to the United States. As there is no evidence in this case that the restitution order represented a global settlement with respect to the debt owed to the United States, the court order does not represent a global settlement. *J.D.*, Docket No. 13-86 (issued June 3, 2013).

considered by the Board for the first time on appeal.<sup>7</sup> As the overpayment recovery questionnaire submitted to the Board does not appear in the record prior to OWCP's March 5, 2013 final decision, the Board has no jurisdiction to consider it.

Moreover, the Board's jurisdiction to review the collection of an overpayment is limited to cases of adjustment, where OWCP decreases later payments of compensation to which the individual is entitled.<sup>8</sup> Because collection of the overpayment in this case cannot be made by adjusting later payments (as appellant is no longer entitled to compensation) but must be recovered by other means, the Board lacks any jurisdiction to review OWCP's recovery of the overpayment.

### **CONCLUSION**

The Board finds that appellant forfeited his right to compensation from March 14, 2006 through October 24, 2008. The Board also finds that he was at fault in creating the resulting \$83,561.99 overpayment of compensation.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> 20 C.F.R. § 501.2(c)(1).

<sup>8</sup> 5 U.S.C. § 8129; *Levon H. Knight*, 40 ECAB 658 (1989).