

8.12 OBLIGATION TO REPORT WORK

8.12.1 Generally

Section 8(j) of the LHWCA provides:

(1) The employer may inform a disabled employee of his obligation to report to the employer not less than semiannually any earning from employment or self-employment, on such forms as the Secretary shall specify in regulations.

(2) An employee who--

(A) fails to report the employee's earnings under paragraph (1) when requested, or

(B) Knowingly and willfully omits or understates any part of such earnings, and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph, forfeits his right to compensation with respect to any period during which the employee was required to file such report.

(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.

33 U.S.C. § 908(j).

The definition of "earnings" for the purpose of Section 8(j) is provided at 20 C.F.R. § 702.285(b):

[T]he term "earnings" is defined as all monies received from any employment and includes but is not limited to wages, salaries, tips, sales commissions, fees for services provided, piecework and all revenue received from self-employment even if the business or enterprise operated at a loss of [sic] if the profits were reinvested.

Section 8(j) of the LHWCA permits an employer to request a claimant report his post-injury earnings. Once the request occurs the employee has 30 days to return the form. The claimant's benefits are subject to forfeiture for earnings that the claimant knowingly understated or omitted. Plappert v. Marine Corps. Exchange, 31 BRBS 13 (1997). An employer can recover such forfeited compensation only by deducting the over payment from future compensation benefits that are due to the claimant. 33 U.S.C. §908 (j)(3)(1988); Stevedoring Services of America v. Eggert, 953 F.2d 552, 556-557 (9th Cir. 1992).

[ED. NOTE: In Eggert, the Ninth Circuit, noted that although the possibility of a state common law claim for recovery was not before it, by providing only for a credit against unpaid compensation,

*Congress expressed an intent to preclude actions for repayment. 953 F.2d at 557. This is echoed by the **Fifth Circuit's** holding in Cooper stating that the LHWCA preempts any asserted common law right by an employer to recoup overpayment under the general federal question statute. Ceres Corp. v. Cooper, 957 F.2d 1199, 1208 (5th Cir. 1992)]*

In Plappert v. Marine Corps. Exchange, the Board resolved the issue as to the definition of the "period" during which the claimant has a duty to report earnings under Section 8(j)(2)(B). Prior to this case the Board had not adequately defined its statutory meaning. Moore v. Harborside Refrigeration, Inc., 28 BRBS 177 (1994); Zepeda v. National Steel & Shipbuilding Co., 24 BRBS 163 (1991); Freiwillig v. Triple A South, 23 BRBS 371 (1990). The plain language of the LHWCA refers only to "any period during which the employee was required to file such report". 20 C.F.R. §§ 702.285-702.286. Section 8(j)(1) refers only to the earning information of "disabled employees". To resolve the issue the Board looked to the legislative history of the section. In doing so, the Board found that Congress only intended that "employees who are receiving compensation need submit a report of their wage earnings." Plappert, 31 BRBS 13 (1997), citing, H.R. Rep. No. 1027, 98th Cong, 2d Sess. 4 (1984), reprinted in, 1984 U.S.C.C.A.N. 2771, 2783.

The Board further noted that the holding in Denton v. Northrop Corp., 21 BRBS 37 (1988) provided some authority and direction. The case stands for the proposition that death benefits are not barred by the application of Section 8(j) as the section is inapplicable to a surviving spouse.

Section 8(j) provides authority for an ALJ to rule that the claimant has forfeited his right to recover benefits for any period during which the claimant knowingly understated earnings which he was required to report. Moore, 28 BRBS 177. The district director has the ability, following an informal conference, to make deductions against future compensation; however, only the OALJ has the ability to adjudicate any disagreement that arises at the informal conference. 33 U.S.C. §908(j)(3) (1988); 20 C.F.R. §702.286(c).

Based on the legislative history, and on the language of the LHWCA and the regulations, the Board has held that the length of the forfeiture period is not limited to six months. Hudley v. Newport News Shipbuilding & Dry Dock Co., 32 BRBS 254 (1998). Additionally, the Board has held that the forfeiture period is limited to the period of under-reported earning. Hudley.

A claimant's failure to properly report his income to federal tax authorities does not excuse his failure to properly report his income on Form LS-200. Zepeda v. National Steel & Shipbuilding Co., 24 BRBS 163 (1991). In Zepeda, the claimant failed to report income from sheet metal work done at home, nor did he report rental income. The Board found that the applicable definition of earnings for purposes of Section 8(j) "clearly encompasses claimant's unreported income as well as his rental income." Zepeda, 24 BRBS at 168.

The Board noted that not only was the claimant represented by counsel at the time the LS-200 form was completed, but moreover, the forms were sent to the claimant in care of his attorney.

In Denton v. Northrop Corp., 21 BRBS 37 (1988), the Board held that a widow of a deceased employee need not comply with Section 8(j). The Board noted that "the plain language of the Act states that this section applies to a 'disabled employee.'" Id. at 45. The Board further noted that "The House of Representatives report of the 1984 Amendments also states that this provision applies to employees receiving compensation for permanent total or permanent partial disability. H.R. Rep. No. 98-1027, 98th Cong., 2d Sess.; Cong. Rec. H9730, 9734 (September 18, 1984)." Id.

Once the claimant established that she was the surviving widow of the decedent, her financial situation was not relevant; death benefits are based on a fixed average weekly wage, i.e., the decedent's average weekly wage at the time of death. Denton, 21 BRBS at 45-46.