

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 27 November 2012**

BRB No.: 10-0678

Case No.: 2009-LHC-00731

OWCP No.: 05-050953

*In the Matter of:*

RANDOLPH YOUNG,

Claimant,

v.

NEWPORT NEWS SHIPBUILDING  
AND DRY DOCK COMPANY,

And

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS

APPEARANCES: John H. Klein  
Attorney for Claimant

Jonathan H. Walker  
Attorney for Employer

BEFORE: KENNETH KRANTZ  
Administrative Law Judge

**DECISION AND ORDER ON REMAND**

This matter involves a remand from the Benefits Review Board (“the Board”) regarding a claim for benefits under the Longshore and Harbor Workers Compensation Act, as amended, 33 U.S.C. § 901 *et seq.* (“the Act”).

In a decision and order on modification issued on August 2, 2010, the undersigned Administrative Law Judge awarded permanent total disability benefits from August 18, 2000, through July 1, 2007 and determined that Claimant’s award was not subject to forfeiture under Section 8(j). Employer appealed, and in a decision and order issued on June 1, 2011, the Benefits

Review Board vacated the findings under Section 8(j) and remanded for further consideration on that issue.

The case was returned to the Office of Administrative Law Judges in September 2011. No briefs were submitted on remand.

### **ISSUES ON REMAND**

1. Whether Claimant had earnings during the periods covered by the LS-200s;
2. If so, whether Claimant knowingly or willfully failed to report such earnings.

### **DISCUSSION**

Section 8(j) of the Act permits an employer to request that a claimant report his post-injury earnings from employment or self-employment. 33 U.S.C. § 908(j)(1) (2006). If the claimant fails to report his earnings or knowingly and willfully omits or understates any part of such earnings, he forfeits his right to compensation for any period during which he was required to file such a report. 33 U.S.C. § 908(j)(2).

Although I found in the underlying decision and order on modification that illegal earnings were not income subject to reporting under Section 8(j), the Board reversed on this issue and stated that Section 8(j) contemplates all monies and revenues from employment and fees from services, including earnings from illegal activities. Accordingly, I will examine the record to determine whether Claimant received illegal earnings from January 1, 1992 through October 18, 1996 or from October 22, 1996 through June 24, 1997, the periods covered by the LS-200s. Under 20 C.F.R. §702.286(b), the employer bears the burden of presenting evidence that earnings have been omitted.

On April 3, 1997, an indictment was filed against Claimant and another man. (EX 7.) The grand jury charged that, beginning in or about August 1993, and continuing up to and including on or about December 17, 1996, in the Eastern District of North Carolina, Claimant and the other man “did knowingly, intentionally, and unlawfully combine, conspire, confederate and agree among themselves, . . . with other persons, both known and unknown to the Grand Jury, to knowingly, intentionally and unlawfully possess with intent to distribute, and to distribute cocaine” in violation of 21 U.S.C. § 846. (EX 7.)

On July 28, 1997, a Rule 11 hearing was held to enter Claimant’s plea. (EX 6.) Claimant indicated that he wished to plead guilty. (EX 6 at 2.) The judge recited the charges against Claimant and stated that the elements of the offense that Claimant would be pleading guilty to were that he “knowingly and intentionally agreed and conspired with at least one other person; [and] that the object of this conspiracy was to possess with the intent to distribute and distribute crack cocaine.” (EX 6 at 9 (original in all capital letters).) Claimant pleaded guilty to the charges and stated that he was in fact guilty of those charges. (EX 6 at 11.) The judge found that Claimant’s plea was freely and voluntarily made and that an accurate factual basis existed for entry of the plea. (EX 6 at 12.) Specifically, the prosecutor’s stated basis for the plea was that

Claimant made drug deals and deliveries for the other man, held money for the other man, and put property in his name and posted bond for the other man and other members of the criminal organization over a substantial period of time. (EX 6 at 12.) The affidavit upon which the criminal complaint was based stated that Claimant had been under active investigation for such criminal activities beginning in August 1995. (EX 5 at 2.)

The plea agreement required that Claimant pay restitution for any gains he made through his crime if ordered to do so. (EX 6 at 8) Claimant testified that he did pay restitution of “less than \$10,000”, although he did not state the specific amount and remembered that he had to take out a loan to pay the restitution.<sup>1</sup> (Cm. Dep. 32, July 1, 2009)

Accordingly, the record demonstrates that Claimant was involved in a criminal drug enterprise from as early as August 1993 until December 17, 1996. Although Claimant testified that he did not earn any income from these activities, such an assertion is not credible in light of the testimony presented to the grand jury, the factual basis for the plea cited by the prosecutor, or Claimant’s own admission that he was ordered to pay restitution. Because the exact date in August on which Claimant began receiving earnings from his illegal conduct is unclear, I will consider the earnings to have begun on September 1, 1993. Based on the foregoing, I find that Claimant obtained illegal earnings from his criminal conduct from September 1, 1993 until December 17, 1996.

Having determined that Claimant had earnings during the periods covered by the LS-200s, I must next determine whether Claimant knowingly or willfully failed to report such earnings. Here, the Claimant was aware of his earnings through criminal conduct and failed to disclose them on the LS-200s. A rational evaluation of the record indicates that Claimant concealed such earnings because they were the product of illegal activity. Claimant has presented no evidence to the contrary. Accordingly, I find that Claimant knowingly failed to report his illegal earnings from September 1, 1993 until December 17, 1996.

### CONCLUSION

I have determined the following based on a complete review of the record in light of the arguments of the parties, testimony of the witnesses, applicable statutory provisions, regulations, and pertinent precedent. Employer has established that Claimant knowingly or willfully failed to report income on his LS-200s. Employer is thus entitled to a suspension of benefits for the periods of September 1, 1993 through October 18, 1996 and October 22, 1996 through December 17, 1996.

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<sup>1</sup> Employer submitted a copy of Claimant’s loan application on March 30, 2012. Claimant objected to the document as irrelevant and non-probative to the issues before the Court. I find that the application merely shows that Claimant received funds which were applied to several accounts, including the clerk of court. Given Claimant’s testimony that he took out a loan and paid restitution, the documents are cumulative and unnecessary. Accordingly, they will not be considered.

**ORDER**

Accordingly, this matter is hereby **REMANDED** to the District Director for consideration of the Claimant's financial situation and establishment of the forfeiture schedule.

KENNETH A. KRANTZ  
Administrative Law Judge

Newport News, Virginia  
KAK/jrs/mrc