

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JORGE E. SOTOMAYOR and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 99-452; Submitted on the Record;
Issued October 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that he forfeited his entitlement to compensation effective July 26, 1996 pursuant to 5 U.S.C. § 8148(a).

On December 10, 1980 appellant, then a 31-year-old parcel post worker, filed a claim for a traumatic injury occurring on that date while in the performance of duty. The Office accepted appellant's claim for synovitis of the right shoulder and tendinitis of the right sacroiliac. The Office further accepted that appellant sustained a right inguinal hernia due to a traumatic injury on July 29, 1981.

By decision dated September 5, 1996, the Office terminated appellant's compensation benefits effective July 26, 1996 under 5 U.S.C. § 8148(a) on the grounds that he had committed fraud related to his receipt of compensation payments.¹ In a decision dated August 13, 1998 and finalized August 25, 1998, a hearing representative affirmed the Office's termination of appellant's compensation.²

The Office required appellant to complete periodic EN-1032 form questionnaires regarding whether he had any earnings from employment or self-employment for the prior 15 months. In forms dated April 1991, April 1992, May 1993, May 1994 and March 1995, appellant indicated that he had not received any earnings from employment or self-employment.

¹ The Office initially issued its termination decision on August 5, 1996. The Office reissued the decision on September 5, 1996.

² Appellant appealed the termination of his benefits to the Board on October 10, 1996. At the Director's request, the Board dismissed the appeal so that the Office could hold a hearing as timely requested by appellant. Docket No. 97-341 (issued June 20, 1997).

In an investigative memorandum dated August 5, 1996, a postal inspector related that appellant worked in a business from 1989 to 1993 and as a radio announcer from February 1992 until April 1995.³

Appellant was indicted on 5 counts of making false statements on the EN-1032 forms in violation of 18 U.S.C. § 1920 and 10 counts of fraud in connection with his claim for benefits under the Federal Employees' Compensation Act in violation of 18 U.S.C. § 1341. Appellant was subsequently convicted of all counts on July 26, 1996 following a jury trial.

The Board finds that the Office properly terminated appellant's compensation benefits effective July 26, 1996 on the grounds that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ In this case, the Office relied on section 8148 of the Act⁵ which provides that a conviction for fraud in the application for benefits shall result in forfeiture of future entitlement to benefits.⁶

Pursuant to section 8148(a) of the Act, a federal or state criminal conviction relating to fraud in the application for or receipt of any benefit under the Act shall result in forfeiture of compensation benefits as follows:

“Any individual convicted of a violation of section 1920 of title 18, or any other federal or state criminal statute relating to fraud in the application for [or] receipt of any benefit under [the Act], shall forfeit (as of the date of such conviction) any entitlement to any benefits such individual would otherwise be entitled to under [the Act] for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.”⁷

The Office's procedure manual states that, in support of termination under section 8148, the record must contain copies of the indictment or information, the plea agreement, if any, the guilty verdict and the court's docket sheet. Further, this evidence must establish that the individual was convicted and that the conviction is related to the claim for, or receipt of, benefits.⁸ The termination is effective on the date of the verdict or on the date the guilty plea is

³ Appellant indicated in an interview with postal inspectors that he had helped his wife with her business from June 1989 until December 1993.

⁴ *William A. Kandel*, 43 ECAB 1011 (1992).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8148(a).

⁷ Sections 8106 and 8129 pertain in part to the recovery by the Office of an overpayment of compensation benefits. 5 U.S.C. §§ 8106(b), 8129.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12 (March 1997).

accepted by the court.⁹ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.¹⁰

In this case, the record establishes that a jury found appellant guilty on July 26, 1996 of committing fraud in connection with his claim for benefits under the Act in violation of 18 U.S.C. § 1920 and 18 U.S.C. § 1341. Therefore, by specific terms of the statute, appellant forfeited his entitlement to all compensation benefits arising from his employment injuries effective the date of his conviction. Congress has enacted this provision as an absolute forfeiture of compensation, without any provision for any waiver of the effects of this section of the Act. The Office, therefore, properly terminated appellant's compensation effective July 26, 1996 pursuant to section 8148(a).

The decision of the Office of Workers' Compensation Programs dated August 13, 1998 and finalized August 25, 1998 is hereby affirmed.

Dated, Washington, DC
October 6, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ *Id at* Chapter 2.1400.12(e)(1).

¹⁰ *Id at* Chapter 2.1400.12(f)(2).