

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAWRENCE M. MORRIS and U.S. POSTAL SERVICE,  
POST OFFICE, Lakewood, CO

*Docket No. 99-1250; Submitted on the Record;  
Issued December 12, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant forfeited his right to compensation as of February 17, 1995 under the provisions of 5 U.S.C. § 8148(a).

The case has been before the Board on prior appeals. In a decision dated September 7, 1994, the Board affirmed a September 23, 1993 Office decision finding that appellant forfeited his compensation during the period December 2, 1988 to November 19, 1991.<sup>1</sup> In an order dated November 25, 1997, the Board granted the Director's motion to affirm a November 4, 1996 decision of an Office hearing representative with respect to forfeiture of compensation from December 2, 1988 to November 19, 1991; the Board also granted the Director's motion to remand the case on the issue of forfeiture of compensation after February 17, 1995.<sup>2</sup>

By decision dated December 17, 1998, the Office determined that appellant forfeited his right to compensation as of February 17, 1995, under the provisions of 5 U.S.C. § 8148(a).

The Board finds that appellant forfeited his entitlement to compensation as of February 17, 1995.

Public Law No. 103-333, enacted on September 30, 1994, amended the Federal Employees' Compensation Act by adding section 8148, which provides for forfeiture of compensation benefits by an individual convicted of fraud with respect to receipt of

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<sup>1</sup> Docket No. 94-405. The Board also remanded the case with respect to the amount of overpayment created.

<sup>2</sup> Docket No. 97-2197. The Director noted that the record did not contain a complete copy of the plea agreement or a copy of the information charging appellant with a violation of 18 U.S.C. § 1920. On the current appeal, appellant again raises the issue of the forfeiture of compensation from 1988 to 1991. On this issue, as noted above, the Board has affirmed a September 23, 1993 Office decision, as well as a November 4, 1996 hearing representative decision with respect to his finding that the issues were limited to forfeiture under section 8148(a) commencing February 17, 1995. The 1988-1991 forfeiture issue is not before the Board on this appeal.

compensation, and prohibits the payment of compensation benefits to an individual while incarcerated pursuant to a felony conviction. Section 8148(a) states:

“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 a receipt of any benefit under this subchapter or subchapter III of the this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter of subchapter III 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.”<sup>3</sup>

The Office’s procedure manual states that in support of termination under section 8148, the record must contain copies of the indictment or information, a copy of the plea agreement, if any, a copy of the document containing the guilty verdict, and/or a copy of the court’s docket sheet.<sup>4</sup> The termination is effective on the date of the verdict or the date the guilty plea is accepted by the court.<sup>5</sup> Due to the criminal basis for the termination, no pretermination notice is required before a final decision is issued.<sup>6</sup>

On February 17, 1995 appellant signed a plea agreement in which he pleaded guilty to an information charging him with a violation of 18 U.S.C. § 1920. The agreement indicated that the violation was a Class A misdemeanor offense. The agreement was accepted and signed by a District Court judge on February 17, 1995. It is appellant’s contention that section 8148(a) may only be applied to a *felony* violation of 18 U.S.C. § 1920, and therefore is not applicable to appellant. Appellant argues that because section 8148(a) does not specifically state that the violation must be a misdemeanor or a felony, the Board should look to the heading of section 8148 for guidance.<sup>7</sup>

The Board is not persuaded by this argument. As the Board noted in *James David Finch*, the heading of a statute, being more general, will not control the more specific words of the Act, except as their generality may indicate a wider operation of the Act than that disclosed by other words.<sup>8</sup> The specific language of 5 U.S.C. § 8148(a) is “any individual convicted of a violation of section 1920 of [T]itle 18” forfeits compensation as of the date of conviction. There is no ambiguity in these words that would require guidance from language outside section 8148(a) and there is no justification for the use of general heading to restrict the scope of section 8148(a).

In *Robert C. Gilliam*, the claimant pleaded guilty to misdemeanor information counts of fraud and the Board found that appellant’s compensation benefits were properly terminated

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<sup>3</sup> 5 U.S.C. § 8148(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12 (March 1997).

<sup>5</sup> *Jorge E. Sotomayer*, 52 ECAB \_\_\_\_ (Docket No. 99-452, issued October 6, 2000).

<sup>6</sup> *Id.*

<sup>7</sup> The title of section 8148 is “Forfeiture of benefits by convicted felons.”

<sup>8</sup> 24 ECAB 181, 192 (1973).

pursuant to section 8148.<sup>9</sup> Appellant has not provided evidence or argument to warrant a different conclusion in this case. The Board accordingly finds that the conviction for a misdemeanor violation of 18 U.S.C. § 1920 requires a forfeiture of compensation pursuant to 5 U.S.C. § 8148(a). The date the guilty plea was accepted in this case is February 17, 1995, and therefore, appellant forfeits entitlement to compensation after that date.

The decision of the Office of Workers' Compensation Programs dated December 17, 1998 is affirmed.

Dated, Washington, DC  
December 12, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> 50 ECAB \_\_\_ (Docket No. 97-2588, issued April 14, 1999).