

**United States Department of Labor
Employees' Compensation Appeals Board**

ARLENE M. FROKJER, Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Eagam, MN, Employer**

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**Docket No. 04-2005
Issued: July 20, 2005**

Appearances:
Arlene M. Frokjer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 11, 2004 appellant filed an appeal from a merit decision of the Office of Workers' Compensation Programs dated December 4, 2003 terminating her compensation under 5 U.S.C. § 8148(a), a merit decision dated December 18, 2003 terminating her compensation based on a finding that her injury-related disability ceased effective that date and a hearing representative's decision dated July 20, 2004 affirming the Office's termination decisions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the Office's termination decisions.

ISSUES

The issue is whether the Office properly terminated appellant's compensation benefits on the grounds that she forfeited her entitlement to compensation effective November 25, 2003 pursuant to 5 U.S.C. § 8148.

FACTUAL HISTORY

On July 11, 2001 appellant, then a 42-year-old parcel post distribution machine clerk, filed an occupational disease claim alleging that she sustained bilateral arm pain due to factors of her federal employment. The Office accepted the claim for myalgias of both arms.

Appellant stopped work on July 14, 2001 and returned to part-time limited-duty work on February 4, 2002. She sustained intermittent periods of temporary total disability until July 20, 2002, when she again stopped work. On October 4, 2002 appellant returned to limited-duty employment in a part-time capacity and returned to full-time limited-duty employment on November 1, 2002.

An investigative memorandum from investigators with the employing establishment dated November 8, 2002 indicated that appellant was videotaped from October 2001 through August 19, 2002 performing activities outside her physical limitations. The record also contains the transcript of a conversation between appellant and an official with the employing establishment.

The employing establishment terminated appellant from employment effective December 31, 2002 for “misrepresenting [her] medical condition in an attempt to obtain benefits to which [she] would not otherwise have been entitled.”

The record contains a jury verdict dated November 25, 2003 finding appellant guilty of 12 counts of false statements to obtain workers’ compensation benefits, 1 count of wire fraud to obtain compensation and 1 count of wire fraud for medical benefits.

By decision dated December 4, 2003, the Office terminated appellant’s compensation pursuant to section 8148 effective November 25, 2003 on the grounds that she was found guilty of violating federal laws to obtain workers’ compensation benefits.

In a decision dated December 18, 2003, the Office terminated appellant’s compensation and entitlement to medical benefits effective that date on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Paul T. Yellin, a Board-certified orthopedic surgeon who provided an impartial medical examination, established that she had no further condition or disability due to her accepted employment injury.

On January 9, 2004 appellant requested a hearing on her claim. She submitted additional evidence.

At the hearing, held on April 26, 2004, appellant challenged the Office’s termination of her compensation on the grounds that she had no further employment-related disability.

In a decision dated July 20, 2004, the hearing representative affirmed the Office’s December 4 and 18, 2003 decisions.¹ The hearing representative found that appellant had

¹ The hearing representative indicated that he was affirming the November 25, 2003 decision; however, it is apparent that this is a typographical error.

submitted sufficient evidence to warrant further development on the issue of whether she had any continuing disability but that as the Office had terminated appellant's compensation based on her conviction for fraud in the application for or receipt of benefits under the Federal Employees' Compensation Act, no additional action was necessary.

LEGAL PRECEDENT

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 or receipt of any benefit under this subchapter or subchapter III of this chapter [compensation for local police officers], shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or 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 [forfeiture] or 8129 [recovery of overpayment].”²

Section 10.17 of the Office's implementing federal regulations provides:

“When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the Federal Government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.”³

The Office's procedure manual states that in support of termination or suspension of compensation the record must contain copies of the indictment or information, the plea agreement, if any, the document containing the guilty verdict and/or the court's docket sheet. Further, this evidence must establish: (1) the individual was convicted; and (2) the conviction is related to the claim for, or receipt of, compensation benefits under the Act.⁴ The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt

² 5 U.S.C. § 8148(a). Public Law No. 103-333, which amended the Act by adding 5 U.S.C. § 8148, was enacted on September 30, 1994.

³ 20 C.F.R. § 10.17.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claim, *Disallowances*, Chapter 2.1400.12(d) (March 1997).

adjudicated.⁵ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁶

ANALYSIS

Under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits forfeits entitlement to compensation and is thereafter permanently barred from receiving compensation under the Act. On November 25, 2003 a jury found appellant guilty of 12 counts of false statements to obtain workers' compensation benefits, 1 count of wire fraud to obtain compensation and 1 count of wire fraud for medical benefits. The record in this case contains a copy of the jury verdict which contains the information regarding the charges listed in the indictment. The Office's implementing federal regulations at section 10.17 provides that a beneficiary's entitlement to compensation terminates on the date of the guilty verdict.⁷ The Board finds that the Office properly terminated appellant's compensation benefits effective that date, November 25, 2003.⁸

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that she forfeited her entitlement to compensation effective November 25, 2003 pursuant to 5 U.S.C. § 8148.

⁵ See *Dennis A. Poppell*, 53 ECAB 557 (2002); 20 C.F.R. § 10.17.

⁶ Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.1400.12(f)(2).

⁷ 20 C.F.R. § 10.17.

⁸ In a decision dated December 18, 2003, the Office terminated appellant's compensation and authorization for medical benefits on the grounds that the medical evidence established that she had no further condition or disability due to her accepted employment injury. The Office, however, on December 4, 2003 had previously terminated appellant's compensation under section 8148 effective November 25, 2003 on the grounds that she was convicted of violating federal laws to obtain compensation benefits. Thus, she is permanently barred from receiving any compensation under the Act, including medical benefits. See *James E. Ganard*, Docket No. 04-1383 (issued April 18, 2005); *Paul Hanley*, 53 ECAB 424 (2002). Consequently, the Office's December 18, 2003 decision is void *ab initio* as it is of no force and effect.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 20, 2004 and December 4, 2003 are affirmed.

Issued: July 20, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member