

rolls. On April 5, 2004 he received a schedule award for a 76 percent permanent impairment of the lungs. The period of the award ran from March 21, 2004 to October 5, 2008.

The Office received an August 11, 2006 judgment in a criminal case from the United States District Court, Western District of Kentucky, showing that appellant was found guilty of conspiring to distribute and to possess with the intent to distribute between 150 and 333.68 grams of methamphetamine, in violation of the Controlled Substances Act. He was also found guilty of knowingly and intentionally attempting to possess with intent to distribute the same.¹ The Court sentenced appellant to serve two concurrent terms of 60 months imprisonment and committed him on August 11, 2006 to the United States Bureau of Prisons.

In a decision dated August 23, 2006, the Office found that appellant's entitlement to compensation for wage loss was suspended due to his felony conviction. The Office found that this suspension was effective August 11, 2006 and would remain in effect until appellant's release from prison. In a decision dated September 7, 2006, the Office revised its prior decision to include suspension of his entitlement to both compensation for wage loss and the schedule award benefits appellant was receiving at the time of his incarceration.

LEGAL PRECEDENT

Section 8148 of the Federal Employees' Compensation Act, entitled "Forfeiture of benefits by convicted felons," states in part:

"(b)(1) Notwithstanding any other provision of this chapter (except as provided under paragraph (3) [relating to compensation for dependents]), no benefits under this subchapter or subchapter III of this chapter shall be paid or provided to any individual during any period during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to that individual's felony under applicable law.

"(2) Such individual shall not be entitled to receive the benefits forfeited during the period of incarceration under paragraph (1), after such period of incarceration ends."²

The implementing regulations clarify that the convicted individual forfeits all rights to compensation during the period of incarceration:

"Whenever a beneficiary is incarcerated in a State or Federal jail, prison, penal institution or other correctional facility due to a State or Federal felony conviction, he or she forfeits all rights to compensation benefits during the period of incarceration. A beneficiary's right to compensation benefits for the period of

¹ 21 U.S.C. § 841 (unlawful acts and penalties); 18 U.S.C. § 2 (aider and abettor liability).

² 5 U.S.C. § 8148(b)(1).

his or her incarceration is not restored after such incarceration ends, even though payment of compensation benefits may resume.”³

ANALYSIS

Beginning August 11, 2006, a federal court committed appellant to the United States Bureau of Prisons to serve two concurrent terms of 60 months imprisonment for violating the Controlled Substances Act. As a convicted felon, appellant thereby forfeits his right to compensation benefits during the period of his incarceration. Payment of compensation may resume after his incarceration ends, but the benefits forfeited during the period of his incarceration shall not be restored. The Office has properly applied 5 U.S.C. § 8148. The Board will affirm the Office’s September 7, 2006 decision.

CONCLUSION

Pursuant to 5 U.S.C. § 8148, appellant forfeited his right to compensation benefits during the period of his incarceration.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2006 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: May 15, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board

³ 20 C.F.R. § 10.18(a) (1999).