

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA VAN SICKLE and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, OK

*Docket No. 03-1586; Submitted on the Record;
Issued February 2, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 4, 2002 under 5 U.S.C. § 8148.

On January 24, 1991 appellant, then a 48-year-old letter sorter, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 1990 she injured her back while in the performance of her federal duties. The Office accepted the claim for a low back strain and herniated disc at L5-S1. Appellant was placed on the periodic rolls and received total temporary disability.¹

On September 4, 2002 appellant made a guilty plea in open court to violating 18 U.S.C. § 1920; making a false statement or fraud to obtain Federal Employees' Compensation Act benefits. The guilty plea was accepted at the time it was made. A postal investigation revealed that appellant had failed to report earnings from self-employment on her EN1032 forms covering the period of April 11 to December 19, 2001. In a July 12, 2002 sworn statement, appellant noted that she worked at Michael Saunders & Co. between April 9 and November 2001 earning a total of \$5,050.00. Appellant acknowledge that she lied on the EN1032 form, but that she was in very bad financial difficulty and feared losing her compensation check. By a March 24, 2003 decision, the Office informed appellant that, as a consequence of pleading guilty to fraud in the application of benefits under the Act, she forfeited her entitlement to such benefits and that her wage benefits were terminated as of September 4, 2002.²

¹ The Board notes that the record contains a September 30, 2002 decision finding an overpayment of \$23,155.39 related to a failure to properly report dependents. However, appellant did not appeal this decision and therefore it is not before the Board.

² The Board notes that the record contains a June 27, 2003 letter regarding a preliminary finding of an overpayment. The overpayment issue is not before the Board as appellant filed her appeal with the Board on June 6, 2003. 20 C.F.R. § 501.2(c).

The Board finds that the Office properly terminated appellant's compensation effective September 4, 2002 due to her pleading guilty to violating 18 U.S.C. § 1920.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ In terminating appellant's compensation in the present case, the Office relied on 5 U.S.C. § 8148(a) which provides that a person convicted of a statute relating to fraud in the application for or receipt of benefits under the Act shall forfeit future entitlement to benefits.

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 overpayments]."⁴

Section 10.17 of the Office's implementing federal regulation 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."⁵

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.⁶ The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt

³ *William A. Kandel*, 43 ECAB 1011, 1020 (1992).

⁴ 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. Subsection (b) of 5 U.S.C. § 8148, not relevant in this case, bars receipt of compensation by any person imprisoned for a felony conviction during the period of such imprisonment. 5 U.S.C. § 8148(b).

⁵ 20 C.F.R. § 10.17.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12d (March 1997).

adjudicated.⁷ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁸

Under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 forfeits his compensation. The claimant is thereafter permanently barred from receiving any compensation under the Act.⁹ Since appellant was convicted of a violation of 18 U.S.C. § 1920, the Office properly terminated her compensation benefits under the forfeiture provision.

The decision of the Office of Workers' Compensation Programs dated March 24, 2003 is affirmed.

Dated, Washington, DC
February 2, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ See *Paul Hanley*, 53 ECAB ___ (Docket No. 01-403, issued March 7, 2002); 20 C.F.R. § 10.17.

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

⁹ Congress has enacted 5 U.S.C. § 8148(a) as an absolute forfeiture of compensation, without any provision for waiver of the effects of this section of the Act. *Michael D. Matthews*, 51 ECAB 247 (1999). This forfeiture is a permanent forfeiture which bars appellant from any further entitlement to compensation for any employment-related injuries or conditions which arose prior to December 18, 1997. *Jeff M. Burns*, 51 ECAB 241 (1999).