

On December 16, 1992 appellant, then a 34-year-old flat sorter, sustained an injury in the performance of duty when a coworker threw a box that struck her head and broke her glasses. The Office accepted her claim for facial contusions, headaches, cervical strain, cervical degenerative disc disease, C5-6 herniated disc and depression. In 1996, appellant underwent

surgery on her cervical spine. She received compensation for temporary total disability on the periodic rolls.

In a July 7, 2008 decision, the Office terminated appellant's compensation benefits effective July 1, 2008. It received information that she pleaded guilty to defrauding the Federal Employees' Compensation Act (FECA or Act) program, specifically and pled guilty to making a material false statement in connection with her compensation benefits.

By decision dated February 2, 2009, an Office hearing representative affirmed the termination. The hearing representative found that appellant forfeited her right to compensation effective July 1, 2008. Appellant argued that 5 U.S.C. § 8148(a) applied only to felony convictions, but citing Board precedent, the Office hearing representative held, that section 8148(a) applied to employees who pleaded to or were found guilty of a misdemeanor under 18 U.S.C. § 1920. She also argued the termination was premature, as the November 3, 2008 judgment accepting her plea was not a part of the record when the Office issued its decision. The Office hearing representative cited Office procedures to support that, in the case of a plea bargain, compensation should be terminated on the date the claimant entered the plea in open court, not the date of sentencing or the date the court papers were signed. Appellant further argued that she was mentally incompetent, but the hearing representative noted that section 8148 made no exception relating to mental incapacity.

On January 26, 2010 appellant requested reconsideration of the Office hearing representative's February 2, 2009 decision. She contended that she did not know it was against the law to see a couple of pain physicians, especially when one treated her neck and the other treated her low back. Appellant argued that she was under the influence of mind-altering drugs when she was arrested and that detectives coerced her into signing a confession by threatening to take her two dogs to the pound. She argued that someone broke into her house in December 2006 and stole her pills. Appellant would not have signed the plea agreement if she knew she was going to be charged with fraud. She insisted her confession was not true and that she never sold pills. Appellant contended that the Office was responsible for her drug addiction, mental condition and pain from 1992 to the present. She argued that she be placed back on compensation.

Appellant argued that her lawyers coerced her into signing the plea bargain by telling her that she was going to prison for many years. She explained that when she saw another physician, he did not bill the Office. Appellant stated that there was no witness, no one she supposedly sold drugs to, because she was not selling drugs. Appellant submitted a copy of a December 13, 2006 sheriff's office incident report showing a complaint of burglary at her residence. A February 4, 2008 letter from the state attorney's office congratulated appellant on completing Drug Felony Pre-Trial Intervention and advised that the charges pending against her were now dismissed effective February 1, 2008. Appellant resubmitted a copy of the Office's July 7, 2008 decision.

In a decision dated February 19, 2010, the Office denied appellant's request for reconsideration. It found that the attached documents were irrelevant because they did not address the issue of her July 1, 2008 guilty plea to defrauding the FECA program. The Office found that appellant's narrative did not consist of a legal arguments to support that the Office's February 2, 2009 decision was not based on the rules and regulations of the Act. Holding that

appellant failed to provide relevant or pertinent evidence not previously considered, the Office denied further merit review of appellant's case.

On appeal, appellant repeats many of the same arguments made to the Office. She states that the state attorney bluffed her attorney, she was naive and gullible, never sold pills and was heavily medicated when arrested. Appellant presented argument for a schedule award and how the statement of accepted facts should be amended.

### **LEGAL PRECEDENT**

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>1</sup> The employee shall exercise this right through a request to the district Office.<sup>2</sup>

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup>

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>4</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the request for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### **ANALYSIS**

The only decision the Board may review is the Office's February 19, 2010 decision denying appellant's request for reconsideration. That was not a decision on the merits of her case rather, it found that her request did not meet one of the standards for reopening her case. The only issue the Board may decide is whether appellant's request for reconsideration meets one of those standards.

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.605.

<sup>3</sup> *Id.* at § 10.606.

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608.

Appellant's January 26, 2010 request for reconsideration, timely filed within a year of the Office's most recent merit decision on February 2, 2009, did not establish that the Office erroneously applied or interpreted a specific point of law. Section 8148(a) of the Act states that any individual convicted of violating 18 U.S.C. § 1920 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 any entitlement to any benefit such individual would otherwise be entitled to under the Act for any injury occurring on or before the date of such conviction.<sup>6</sup> The effective date of termination in fraud cases under section 8148(a) is the date of conviction, which in cases of a plea agreement is the date the claimant made the plea in open court, not the date of sentencing or when the court papers were signed.<sup>7</sup>

On July 1, 2008 appellant pled guilty in open court to fraud and the Office terminated her benefits under the Act effective that date. Her request does not show an erroneous application or interpretation of section 8148(a). That section does not require a felony conviction, only a violation of any federal or state criminal statute relating to fraud.<sup>8</sup>

Appellant's request for reconsideration did not advance a relevant legal argument not previously considered by the Office. None of the arguments she made in her request for reconsideration is relevant. Appellant offered various explanations, but did not deny the fact that she was found guilty to violating 18 U.S.C. § 1920 on July 1, 2008. Her plea agreement is a matter of record. Many of appellant's arguments, such as her insistence that she did not sell pain pills to anyone, have nothing to do with the termination of her compensation. She was convicted of knowingly and willfully concealing the fact that she was being treated by other physicians who were also prescribing pain medication. That was the fraud, appellant's failure to disclose this material fact. Her arguments on reconsideration do not rebut this finding as noted, the Board has no power to review her plea agreement or her conviction for fraud. It is sufficient that the plea agreement exists and that the record shows no evidence that her conviction for fraud was ever reversed, vacated or set aside.

Appellant did not submit with her request for reconsideration any evidence that is relevant and pertinent new evidence not previously considered by the Office. The December 13, 2006 sheriff's office incident report, showing a complaint of burglary at her residence, is not relevant to the grounds on which her compensation benefits were terminated. The February 4, 2008 letter from the state attorney's office, congratulating appellant on completing the Drug Felony Pre-Trial Intervention and advising that the charges pending against her were now dismissed effective February 1, 2008, do not address her later plea agreement and fraud conviction. A copy of the Office's July 7, 2008 decision is not new evidence relevant to the underlying issue.

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<sup>6</sup> 5 U.S.C. § 8148(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.144.12(a) (March 1997).

<sup>8</sup> *Terry A. Keister*, 56 ECAB 559 (2005) (finding that the claimant forfeited, under section 8148 of the Act, his entitlement to compensation benefits following his guilty plea to a misdemeanor charge of making a false claim under the Act).

Because appellant's January 26, 2010 request for reconsideration does not meet at least one of the three standards for obtaining a merit review of her case, the Board will affirm the Office's February 19, 2010 decision denying her request.

Appellant's arguments on appeal are repetitive and irrelevant. Whether she sold pills is irrelevant. Whether appellant is entitled to a schedule award is irrelevant and whether the statement of accepted facts should be amended is irrelevant to the grounds upon which the Office terminated her compensation benefits.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's January 26, 2010 request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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