

SECTION 31

Section 31 of the Act, 33 U.S.C. §931, was revised by the 1984 Amendments to the Act. The amended version of Section 31 was effective on the date of enactment, September 28, 1984.

As amended, Section 31(a) states that any false statement or representation, which is knowingly and willfully made for the purpose of obtaining benefits under the Act, is a felony punishable by a fine of not more than \$10,000 or imprisonment not to exceed five years or both. 33 U.S.C. §931(a)(1). The United States attorney for the district in which the injury is alleged to have occurred is to make every reasonable effort to promptly investigate any complaint made under this subsection. 33 U.S.C. §931(a)(2). Prior to the 1984 Amendments, this section stated that the penalty for the conduct described was a misdemeanor, resulting in a fine not to exceed \$1,000 or imprisonment not to exceed one year or both.

The Amendments added Section 31(b), which authorizes the Secretary of Labor to prepare and maintain a list of persons who have previously represented claimants for a fee in cases under the Act and who are not authorized to represent claimants. Such persons may not receive a representation fee. Disqualified representatives include persons who have been convicted of any crime in connection with the representation of a claimant under the Act or any workers' compensation statute, who have engaged in fraud in connection with the presentation of a workers' compensation claim, who have been prohibited from representing claimants before any other workers' compensation agency for reasons of professional misconduct similar to those enumerated here or who have accepted fees for representing claimants under the Act which were not approved or were in excess of the amount approved under Section 28. 33 U.S.C. §931(b)(2)(B)(i)-(iv).

However, a disqualified individual is not prohibited from representing his or her own claim or from representing without a fee a claimant who is a spouse, mother, father, sister, brother or child of such individual. 33 U.S.C. §931(b)(2)(C). A determination that an individual is a disqualified representative remains in effect for at least three years. 33 U.S.C. §931(b)(2)(D). Under Section 31(b)(3), no employee is liable for paying a representation fee to any representative whose fee has been disallowed under this section.

Finally, Section 31(c) provides that a person, including but not limited to, an employer, his authorized agent, or an employee of an insurance carrier who knowingly and willfully makes a false statement or representation for the purpose of reducing, denying or terminating benefits is subject to a fine not to exceed \$10,000, five years imprisonment or both.

In a case decided under the pre-1984 version of Section 31, the Board and the Fourth Circuit held that this section does not bar compensation to a claimant, even if the injury is

causally related to a misrepresentation regarding his medical history. *Newport News Shipbuilding & Dry Dock Co. v. Hall*, 674 F.2d 248, 14 BRBS 641 (4th Cir. 1982), *aff'g* 13 BRBS 873 (1981) (S. Smith, dissenting).

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The Board held that as employer's complaint was not an action to enforce compliance with a direct order of the administrative law judge, and claimant did not disobey a lawful process, as he did not resist the administrative law judge's jurisdiction or a discovery order, employer's attempt to recoup benefits allegedly obtained by fraud must fail. Section 31(a) provides the sole remedy against a claimant who has allegedly filed a false claim. The Board therefore reversed the administrative law judge's finding that Section 27(b) was applicable and vacated his certification of facts to the district court and the recommendation that claimant be made to repay employer. *Phillips v. A-Z Int'l*, 30 BRBS 215 (1996), *vacated*, 179 F.3d 1187, 33 BRBS 59(CRT) (9th Cir. 1999).

On appeal, the Ninth Circuit held that the Board lacked jurisdiction to review the administrative law judge's certification of facts to the district court and the recommendation that claimant be made to repay employer. The court held that the express grant of fact finding and contempt power to the district court under Section 27(b) implicitly removes review power from the Board. In the absence of a clear statutory directive or interpretive regulations setting forth the procedural mechanism by which an administrative law judge must "certify the facts to the district court," the court held that the administrative law judge's issuance of his Supplemental Decision and Amended Supplemental Decision, which certified his finding that claimant filed a fraudulent claim and recommended sanctions, was a sufficient method of certification to the district court. *A-Z Int'l v. Phillips*, 179 F.3d 1187, 33 BRBS 59(CRT) (9th Cir. 1999).

The Board held that employer had no direct remedy for reimbursement against Brad Valdez under the Act. Specifically, employer was not entitled to relief against the fraud committed by Brad Valdez in this case under Sections 19, 27, and 31 of the Act. The Board noted that the Act provides only for a credit of excess payments against unpaid compensation due; no further compensation was due in this case to this claimant. Moreover, Section 31(a) provides the sole remedy against a claimant who has allegedly filed a false claim, and thus, employer's only remedy is to file a complaint with the appropriate United States Attorney. *Valdez v. Crosby & Overton*, 34 BRBS 69, *aff'd on recon.*, 34 BRBS 185 (2000).

The filing by claimant of a fraudulent claim for benefits under the Act does not constitute disobeying or resisting any "lawful order or process" within the meaning of Section 27(b), as the term "lawful process" in the context of the contempt power generally refers to the use of summons, writs, warrants or mandates issuing from a court in order to obtain jurisdiction over a person, and claimant in this case did not refuse to comply in this manner. Moreover, the Act expressly provides mechanisms other than contempt sanctions, under

Sections 31(a) and 48, for the filing of a fraudulent claims, demonstrating that Congress did not intend to permit an employer to seek a contempt citation in order to recover damages resulting from filing of fraudulent claims. Therefore, the Ninth Circuit affirmed the district court's dismissal of employer's complaint with prejudice, without addressing employer's arguments on the merits, on the ground that the district court lacked subject matter jurisdiction to impose sanctions on claimant. *A-Z Int'l v. Phillips*, 323 F.3d 1141, 37 BRBS 1(CRT) (9th Cir. 2003).