

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARVEY P. MILSTEIN and DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, Los Angeles, Calif.

*Docket No. 95-1907; Submitted on the Record;
Issued May 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 15, 1994 on the grounds that he pled guilty on March 15, 1994 to one count of violating 18 U.S.C. § 1920.

The Board has duly reviewed the case record in the present case and finds that the Office properly terminated appellant's compensation effective March 15, 1994, on the grounds that he pled guilty on March 15, 1994 to one count of 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.¹ In terminating compensation pursuant to section 8106(b), the Office has the burden of proof in establishing that an employee did, either with knowledge, consciously, willfully or intentionally, fail to report employment or earnings.² The Office may meet this burden if it establishes that a claimant violated a criminal statute by falsely completing the affidavit section of a Form CA-1032.³

In this case, the Office relied on Public Law 103-112, 107 Stat. 1089, enacted on October 21, 1993, which prohibits individuals who have been convicted of fraud⁴ related to their claims from receiving further benefits paid by the Employees' Compensation Fund pursuant to

¹ *William A. Kandel*, 43 ECAB 1011, 1020 (1992).

² *Linda K. Richardson*, 47 ECAB ___ (Docket No. 93-1781, issued November 3, 1995).

³ *Robert S. Luciano*, 47 ECAB ___ (Docket No. 95-1588, issued September 10, 1996).

⁴ Fraud is defined in 18 U.S.C. § 1920, which provides that anyone who "knowingly and willfully falsifies, conceals, or covers up a material fact, or makes a false, fictitious, or fraudulent statement or representation, or makes or uses a false statement or report knowing the same to contain any false, fictitious, or fraudulent statement or entry in connection with the application for or receipt of compensation or other benefit or payment under subchapter I or III of chapter 81 of title 5, shall be guilty of perjury."

section 8147 of the Federal Employees' Compensation Act.⁵ Subsequently, Public Law 103-333, enacted on September 30, 1994, encompasses the essence of this prohibition by adding to the Act section 8148, which provides that convicted felons shall forfeit future entitlement to benefits.

Section 8148(a) provides that an individual convicted of a federal or state statute relating to fraud in the application for or receipt of any benefits under the Act shall forfeit as of the date of such conviction 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 the conviction.⁶ Such forfeiture shall be in addition to any action taken under sections 8106 or 8129 for recovery of an overpayment.

The Office's procedure manual states that in support of termination under section 8148, the record must contain copies of the indictment or information, the plea agreement, if any, the document containing the guilty verdict, and 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.⁷ The termination is effective on the date of the verdict or on the date the guilty plea is made in open court.⁸ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁹

On March 15, 1994 appellant pled guilty in federal court to one count of violating 18 U.S.C. § 1920,¹⁰ a misdemeanor offense of making a false statement to obtain compensation under the Act.¹¹ By decision dated March 29, 1994, the Office terminated appellant's compensation effective March 15, 1994, on the grounds that he pled guilty on March 15, 1994 to

⁵ 5 U.S.C. § 8147. Public Law 103-112 covers fraud convictions between October 21, 1993 and September 30, 1994.

⁶ Section 8148(b), not relevant in this case, provides for the suspension of benefits payable to beneficiaries imprisoned as a result of a felony conviction not related to claims under the Act. 5 U.S.C. § 8148(b).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.11 (August 1995).

⁸ *Id.*; Chapter 2.1400.11(d)(1).

⁹ *Id.*; Chapter 2.1400.11(e)(2).

¹⁰ The record contains a court document which indicates that on March 15, 1994 appellant pled guilty to violating 18 U.S.C. § 1001; however, a review of the record reveals that this document contains a typographical error and that on March 15, 1994 appellant actually pled guilty to violating 18 U.S.C. § 1920. The record also contains a transcript of court proceedings dated March 15, 1993, but the context and content of the transcript show that the proceedings actually took place on March 15, 1994.

¹¹ The record reveals that appellant indicated on several Forms EN-1032 that he was not employed or self-employed despite the fact that he was self-employed as a psychologist at the Del Carmen Medical Center and received Office compensation benefits for periods covered by these forms. He had been receiving Office compensation benefits for total disability due to his employment injuries, a lumbosacral contusion and sprain, torn medial meniscus of his left knee, and adjustment disorder with depression. Appellant's March 15, 1994 plea related to false statements made on a Form EN-1032 completed on January 23, 1989.

one count of violating 18 U.S.C. § 1920. By decision dated and finalized January 17, 1995, an Office hearing representative affirmed the Office's March 29, 1994 decision.¹²

Appellant has alleged that the forfeiture provisions of Public Law 103-112 do not apply to him, because he was convicted of fraudulently obtaining Office compensation benefits prior to October 21, 1993, the effective date of Public Law 103-122. Appellant indicated that on June 29, 1993, he pled guilty in federal court to one count of violating 18 U.S.C. § 1001, a felony offense of making a false statement to a government agency. He asserted that, although the court granted his motion to withdraw his June 29, 1993 plea and he pled guilty on March 15, 1994 to violating 18 U.S.C. § 1920, the effective date of his conviction should be considered June 29, 1993, *i.e.*, a date prior to October 21, 1993. The Board notes, however, that the mere fact that appellant was convicted prior to October 21, 1993 of making fraudulent statements in connection with obtaining Office compensation benefits does not negate the fact that he was convicted of such an offense when he was found guilty of violating 18 U.S.C. § 1920 on March 15, 1994, *i.e.*, a date after Public Law 103-122 became effective on October 21, 1993.

Appellant also alleged that his compensation should not be terminated because he was not advised that he would forfeit his compensation if he pled guilty to violating 18 U.S.C. § 1920. The Board notes, however, that the Act contains no provision that a person who pleads guilty to fraudulently obtaining Office benefits must be advised that such a plea might lead to termination of his or her compensation benefits. Moreover, a review of the court transcripts reveals that appellant had some knowledge of the possibility that the Department of Labor would modify his compensation as a result of his guilty plea. Although appellant suggested that he believed the Office would not terminate his future compensation payments, he did not provide the basis for this belief and the record does not otherwise contain evidence showing that the Office made any assurance to appellant regarding his continued receipt of compensation.

The Board finds that appellant's fraud conviction under 18 U.S.C. § 1920 proves his willful intent to conceal his self-employment and whatever earnings resulted so that he could continue to receive disability compensation checks to which he was not entitled. While section 8106(b) is a penalty provision and will thus be narrowly construed,¹³ appellant's conviction for falsely completing a Form CA-1032 brings him within the purview of section 8148 and thus precludes his future entitlement to benefits. Inasmuch as appellant was convicted subsequent to the enactment of Public Law 103-112 and the Office properly followed its procedures, including presenting the proper documents and proofs, the Board finds the Office properly terminated appellant's compensation effective March 15, 1994.

¹² By decision dated April 7, 1994, the Office determined that appellant forfeited his compensation for the period March 7, 1987 to April 17, 1990 due to his knowing omission of earnings on Forms EN-1032 covering this period. This decision is not currently before the Board in that it was issued more than one year prior to the April 13, 1995 filing of the present appeal; *see* 20 C.F.R. § 501.3(d)(2).

¹³ *Christine P. Burgess*, 43 ECAB 449, 458 (1992).

The decision of the Office of Workers' Compensation Programs dated January 17, 1995 is affirmed.¹⁴

Dated, Washington, D.C.
May 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹⁴ By notice dated March 17, 1995, the Office advised appellant of its preliminary determination that he had received a \$98,783.57 overpayment of compensation. However, the record does not contain a final decision of the Office concerning this matter and, therefore, it is not currently before the Board; *see* 20 C.F.R. § 501.2(c).