

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 February 11, 1999*

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 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 this case, the Office relied on Pub. L. No. 103-112, § 102, 107 Stat. 1089, enacted on October 21, 1993, which prohibits the Office from paying compensation to "any individual convicted of a violation of 18 U.S.C. § 1920, or of any felony fraud related to the application for or receipt of benefits" under the Federal Employees' Compensation Act.²

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.³ The termination is effective on the date of the verdict or on the date the guilty plea is made in open court.⁴ Because

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

² 5 U.S.C. §§ 8101-8193. Section 102 covers fraud convictions between October 21, 1993 and September 30, 1994.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12d (March 1997).

⁴ *Id.*; Chapter 2.1400.12e(1).

of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁵

On March 15, 1994 appellant pled guilty in federal court to one count of violating 18 U.S.C. § 1920,⁶ a misdemeanor offense of making a false statement to obtain compensation under the Act.⁷ 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 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.

Appellant has alleged that the forfeiture provisions of Pub. L. No. 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 Pub. L. No. 103-112. 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 section 102 of Pub. L. No. 103-112 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.

⁵ *Id.*; Chapter 2.1400.12f(2).

⁶ 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.

⁷ 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 psychiatrist 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.

Inasmuch as appellant was convicted of violating 18 U.S.C. § 1920 during the effective period of section 102 of Pub. L. No. 103-112 and the Office properly followed its procedures, including presenting the proper documents and proofs, the Board finds that the Office properly terminated appellant's compensation effective March 15, 1994.

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

Dated, Washington, D.C.
February 11, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member